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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THEODORUS STROUS, in his capacity as
a shareholder of SCIO DIAMOND
TECHNOLOGY CORP. brings this action
derivatively on behalf of SCIO DIAMOND
TECHNOLOGY CORP., and as a Class
Action on behalf of himself and all other
Adamas shareholders who are similarly
situated

Plaintiff,

v.

BERNARD MCPHEELY, KARL
LEAVERTON, GERALD MCGUIRE,
LEWIS SMOAK, ADAMAS ONE CORP.
and JOHN G. GRDINA

Defendants,

and

SCIO DIAMOND TECHNOLOGY CORP.,

Nominal Defendant.

Case No. 2:22-cv-00256-JCM-EJY

**VERIFIED SECOND AMENDED
STOCKHOLDER DERIVATIVE
COMPLAINT AND
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

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2 Plaintiff Theodorus Strous (“Plaintiff” or “Strous”), brings both: (a) a derivative action in
3 his capacity as a shareholder of Scio Diamond Technology Corp (“Scio” or the “Company”), for
4 the benefit of nominal defendant Scio: (a)(i) against certain of Scio’s directors and/or officers,
5 Bernard McPheely, Karl Leaverton, Gerald McGuire, and Lewis Smoak for breaches of their non-
6 exculpable fiduciary duties and other serious misconduct; and (a)(ii) against Adamas One Corp.
7 (“Adamas”), John Grdina, and Gerald McGuire for their misconduct that has harmed Scio
8 (collectively, the “Derivative Action”); and (b)(1) a direct class action, in Plaintiff’s capacity as a
9 shareholder of Adamas on behalf of himself and all others similarly situated against Adamas, John
10 Grdina, and Gerald McGuire for breaches of their fiduciary duties and other misconduct (the
11 “Class Action”). The Derivative Action and the Class Action are collectively referred to as the
12 “Action”.
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15 Plaintiff’s allegations are based upon his personal knowledge as to himself and his own
16 acts, and upon information and belief, developed from the investigation and analysis by Plaintiff’s
17 counsel, including a review of publicly available information, including filings by Scio and/or
18 Adamas with the U.S. Securities and Exchange Commission (“SEC”) and the State of Nevada,
19 State of Minnesota, press releases, news reports, publicly available filings in lawsuits, and matters
20 of public record.
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23 **NATURE AND SUMMARY OF THE ACTION**

24 1. The Derivative Action is brought for the benefit of Scio, based on wrongdoing
25 committed from at least June 2019 (and most likely prior to) through the present (the “Relevant
26 Period”) by Defendants Bernard McPheely (“McPheeley”), Karl Leaverton (“Leaverton”), Gerald
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1 McGuire (McGuire”), Lewis Smoak (“Smoak”) (collectively, the “Scio Individual Derivative
2 Defendants”, and together with Scio, the “Scio Derivative Defendants”), and Adamas, John Grdina
3 (“Grdina”), and McGuire. Grdina and McGuire are collectively referred to as the “Adamas
4 Individual Derivative Defendants” and together with Adamas, the “Adamas Derivative
5 Defendants”.

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7 2. The breaches of fiduciary duty by the Scio Individual Derivative Defendants,
8 including the duties of loyalty, care and candor were in large part in connection with the transaction
9 in which Adamas acquired substantially all of the assets of Scio in exchange for cash (assumption
10 and payment of debt) and Adamas stock (the “Adamas Transaction”), to be paid to Scio, pursuant
11 to an Amended Asset Purchase Agreement dated January 31, 2019 (“Amended Agreement”), and
12 as represented in Scio’s Final Proxy Statement dated May 17, 2019 (“Scio Final Proxy Statement”)
13 and other Adamas Transaction documents, and Scio’s SEC filings. As part of the Adamas
14 Transaction, Scio had the right to make requests to Adamas to register 900,000 of the Adamas
15 shares received by Scio (for the benefit of its shareholders) in certain time intervals and on a
16 graduated basis. Shareholder approval by Scio shareholders was required to consummate the
17 Adamas Transaction. The Special Meeting to approve the Adamas Transaction was set for June 7,
18 2019, and then unbeknownst to Scio shareholders was reconvened in August 2019. According to
19 public sources, shareholder approval was obtained.

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22 3. The Adamas Transaction purportedly closed on October 17, 2019, according to the
23 Form S-1 Preliminary Prospectus/Registration Statement filed by Adamas with the SEC on May
24 31, 2022 (the “Preliminary Prospectus/Registration Statement”), which ultimately became the
25 operative Registration Statement. Adamas filed a series of Preliminary Prospectus with the SEC
26 indicating that Adamas sought SEC approval of the registration of certain shares of Adamas,
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1 selling some of those shares in an Initial Public Offering (“IPO”) and trading on a national
2 exchange. On November 14, 2022, Adamas filed a Notice of Effectiveness and Registration of
3 Securities with the SEC. The Final Prospectus was filed by Adamas with the SEC on December 6,
4 2022, and on December 9, 2022, certain Adamas shares began trading publicly on NASDAQ. On
5 December 14, 2022, Adamas announced the closing of the IPO. Adamas filed its first periodic
6 filing on Form 10K with the SEC on January 13, 2023.

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8 4. The Scio Individual Derivative Defendants have repeatedly breached their
9 fiduciary duties in the aftermath of the Scio shareholder vote on June 7, 2019, purportedly
10 approving the Adamas Transaction by Scio shareholders. They have abandoned Scio and its
11 shareholders, egregiously violating the duty of care by providing no oversight whatsoever. Scio
12 had the right to make comments in connection with the substance of the Registration Statement
13 and Final Prospectus filed by Adamas on May 31, 2022 and December 6, 2022, respectively,
14 according to the Amended Registration Of Rights Agreement dated January 31, 2019. The Scio
15 Individual Derivative Defendants have disappeared and have taken steps to cut their ties with Scio.
16 The only Scio Individual Derivative Defendant who has not disappeared is McGuire and that is
17 because he has been the current Chief Operating Officer (“COO”) of Adamas since September 1,
18 2019, and received a signing bonus in the form of Adamas shares.

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21 5. The Scio Individual Derivative Defendants also have violated the duty of candor
22 by utterly failing to keep Scio shareholders up to date concerning the Adamas Transaction and
23 other important events. For example, the Scio Individual Derivative Defendants caused and/or
24 permitted Scio to distribute the Adamas shares pro rata to the Scio shareholders in September 2019
25 and then hid (and continue to hide) the pro rata distribution from Scio shareholders. The Scio
26 shareholders are still in the dark about their individual personal stakes in Adamas stock. The Scio
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1 Individual Derivative Defendants also failed to exercise Scio’s right to request Adamas to make a
2 good faith effort to register the 900,000 Adamas shares in allotments of 300,000, 300,000, and
3 300,000 shares. Not knowing that the pro rata distribution had even occurred has caused Scio and
4 Scio shareholders to fail to exercise their rights under the Amended Agreement (and supporting
5 Adamas Transaction documents) and protect their interests and financial stake in Adamas. In fact,
6 the last communication from the Scio Individual Derivative Defendants concerning the Adamas
7 stock to be received by Scio in the Adamas Transaction was set forth in the Scio Final Proxy
8 Statement on May 17, 2019, representing to Scio shareholders that “the Board intends to hold [the
9 Adamas shares] indefinitely in order to permit the stockholders to benefit from the business going
10 forward” and that “[t]he Board intends to consider all options available to [Scio] regarding its
11 future business, including in active business activities.”
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14 6. The Scio Individual Derivative Defendants violated the duty of loyalty by
15 permitting and/or causing the amount of Adamas shares received by Scio for the benefit of Scio
16 shareholders in the Adamas Transaction reduced from 900,000 shares to 800,000 shares pursuant
17 to a Second Addendum dated February 3, 2020 (the “Second Addendum”), four months after the
18 Adamas Transaction purportedly closed on October 17, 2019. Again, Scio shareholders were kept
19 in the dark about the secret reduction that the Scio Individual Derivative Defendants had permitted
20 and/or caused until the filing of the Adamas Preliminary Prospectus/Registration Statement with
21 the SEC on May 31, 2022, where the Second Addendum was included as a publicly filed exhibit
22 for the first time, finally disclosing to Scio shareholders well over two years after the Second
23 Addendum was executed that the shares had been reduced to 800,000. Although there is mention
24 of three tranches of 300,000, 300,000 and 200,000 in the Registration of Rights Section of the draft
25 Form S-1’s filed by Adamas with the SEC on November 5, 2021, December 23, 2021 and April
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1 13, 2022, there was no mention that the 900,000 Adamas shares had been reduced to 800,000
2 through a Second Addendum or any other document. The earlier draft Form S-1s mention that
3 there is a February 3, 2020, amendment without any further explanation tying it to any reduction
4 in shares or what the amendment even was. Even the May 31, 2022 Preliminary
5 Prospectus/Registration Statement contained no further information about how and why the
6 reduction occurred. The Scio Individual Derivative Defendants have never informed Scio
7 shareholders that Scio and Scio shareholders stake in Adamas had been reduced, yet Scio was
8 purportedly a party to the Second Addendum.
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10 7. According to the Second Addendum, this reduction in Adamas shares was made
11 retroactive to the date of the Amended Agreement, January 31, 2019. The “Second Addendum”
12 was signed by Grdina on behalf of Adamas and McGuire purportedly on behalf of Scio as Scio’s
13 CEO, while McGuire was simultaneously serving as Adamas COO and a director of Scio, a prima
14 facie conflict and breach of fiduciary duties in the Derivative Action as a Scio Individual
15 Derivative Defendant. The Scio Individual Derivative Defendants permitted and/or caused Scio to
16 be represented by McGuire, who was obviously conflicted by simultaneously serving as Adamas
17 COO as of September 2019 (and received a signing bonus of Adamas shares) and as Scio’s CEO.
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20 8. During the Relevant Period Scio suffered a number of adverse events engineered
21 by the Scio Individual Derivative Defendants: (i) On August 9, 2019, the SEC entered an order
22 that the Scio Individual Derivative Defendants voluntarily accepted, revoking Scio’s registration
23 of its shares. The reason for the SEC order was because Scio had failed to file quarterly reports
24 (Form 10-Q’s) after the fiscal quarter ended on December 31, 2016, and annual reports (Form 10-
25 K’s) after the fiscal year ended March 31, 2016; (ii) Intentionally caused Scio to have its corporate
26 status revoked in Nevada on or about September-October 2019 and failed to put the assets of Scio
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1 into a trust in violation of Nevada corporate law (NRS 78.175(5)) and, upon information and belief,
2 the Scio Individual Derivative Defendants dissolved Scio and failed to hold a shareholder vote on
3 dissolution and/or failed to provide notice to Scio shareholders of the dissolution, a violation of
4 Nevada corporate law (NRS 78-580(3)); (iii) failed to notify Scio shareholders that a pro rata
5 distribution had been made to each of the Scio shareholders of Adamas stock pursuant to the
6 Adamas Transaction; (iv) caused or permitted Adamas to reduce the Adamas shares Scio had
7 already received from Adamas from 900,000 to 800,000, at least four months after the Adamas
8 Transaction closed; (v) failed to timely request, and may not have requested at all, registration of
9 the Adamas stock received by Scio in the Adamas Transaction; (vi) failed to inform Scio
10 shareholders comments made by Scio in connection with the Adamas Preliminary
11 Prospectus/Registration and Final Prospectus, if any; and (vii) Scio was sued by Best & Flanagan,
12 LLC, who represented Scio in the Adamas Transaction, for outstanding legal fees. The Scio
13 Individual Derivative Defendants caused and/or permitted Scio to have a default judgment entered
14 against it. Scio failed to file an answer or otherwise respond to the Best & Flanagan complaint.
15 McGuire appeared on behalf of Scio and the Court informed him that as a non-lawyer he was not
16 permitted to represent a corporate entity such as Scio and that the Court was treating it as a failure
17 to appear. Ultimately, the default judgment was satisfied.

21 9. As part of the Adamas Transaction, all of the Scio Individual Derivative Defendants
22 had their personal secured debt satisfied as part of the Adamas Transaction. Even the Scio
23 Individual Derivative Defendants concede that they “have an interest in the [Adamas Transaction]
24 that is different than the average [Scio] shareholder.” The Adamas Preliminary
25 Prospectus/Registration Statement also discloses a \$125,000 note payable on demand to “certain
26 individuals affiliated with Scio” that was satisfied. No information was included identifying those
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1 “certain individuals affiliated with Scio.”

2 10. The Adamas Derivative Defendants are being sued by Scio, in part, based on the
3 same secret reduction in Adamas stock achieved pursuant to the Second Addendum. The amount
4 of the Adamas shares received by Scio (ultimately for the benefit of its shareholders) was reduced
5 by 100,000 shares, a reduction of over 11%, a material amount, damaging Scio and its shareholders
6 who had already received the 900,000 shares pursuant to the Amended Agreement and other
7 Adamas Transaction documents, including representations in the Adamas Preliminary
8 Prospectus/Registration Statement and Final Prospectus. According to Adamas, it delivered the
9 900,000 shares of Adamas stock to Scio on September 17, 2019, well before the signing of the
10 Second Addendum on February 3, 2020. Given the pro rata distribution of Adamas stock in
11 September 2019, this raises troublesome issues about the source of the 100,000 shares.
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14 11. Adamas, Grdina and McGuire are also defendants in the Class Action, being sued
15 by Plaintiff and all other Scio shareholders who are also now Adamas shareholders who received
16 Adamas stock pursuant to the Adamas Transaction, (the “Class”). Excluded from the Class are all
17 Scio Individual Derivative Defendants and Adamas Class Action Defendants (collectively
18 “Defendants”), Defendants’ family members and/or entities controlled by Defendants and/or
19 Defendants’ family members, and all heirs, assigns and successors.
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21 12. In their capacity as Adamas shareholders, Plaintiff and the Class were left in the
22 dark by the Adamas Class Action Defendants that they had received a pro rata distribution of
23 Adamas stock until after the original complaint was filed in this matter on February 10, 2022,
24 although they had a duty to do so. Individual Class Action Defendant (and Scio Individual
25 Derivative Defendant) McGuire emailed Plaintiff’s counsel on March 8, 2022, prior to retaining
26 representation, to inform Plaintiff’s counsel that the Adamas shares had already been distributed
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1 to Scio shareholders on a pro rata basis back in September 2019. This is the first time that Plaintiff
2 could have discovered that Scio shareholders had received a pro rata distribution of Adamas stock
3 and were now Adamas shareholders, too. To date, the Adamas Class Action Defendants, other
4 than McGuire's email to Plaintiff's counsel in February 2022, have never informed Plaintiff and
5 the Class that they are Adamas shareholders, although Plaintiff and the Class have been Adamas
6 shareholders since September 2019. To this day, the Class remains uninformed about the pro rata
7 distribution to Scio shareholders.
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9 13. Once Plaintiff and the Class received a pro rata distribution of Adamas stock
10 pursuant to the Adamas Transaction, the Adamas Class Action Defendants had a duty to inform
11 Scio stockholders that they were also Adamas shareholders (as did the Scio Individual Derivative
12 Defendants). Instead, they did nothing. Nor did the Class Action Defendants ever communicate
13 the reduction in shares to Plaintiff and the Class that occurred in February 2020, which was first
14 discovered by Plaintiff's counsel upon review of the Preliminary Prospectus/Registration
15 Statement issued by the Class Action Defendants on May 31, 2022. The Second Addendum
16 appeared as an exhibit to the Preliminary Prospectus/Registration Statement. Earlier drafts of the
17 Preliminary Prospectus/Registration Statement failed to attach the Second Addendum as an
18 exhibit, although the earliest draft was filed with the SEC on November 5, 2021. None of the
19 exhibits listed in the earlier draft S-1s were attached until the Preliminary Prospectus/Registration
20 Statement was filed with the SEC on May 31, 2022. The Class Action Defendants have had no
21 communications with Plaintiff and the Class until the public filing of the initial draft Form S-1 on
22 November 5, 2021, well after they became Adamas shareholders in September 2019 and the
23 February 3, 2020, Second Addendum. In fact, the only reason Plaintiff and the Class had access to
24 even this information is because Adamas intended to go public and was required to file with the
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1 SEC.

2 14. In the process of going public, Adamas issued public filings that misrepresented
3 the status of the Action and service issues as described below.

4 15. As a measure of value, the 900,000 Adamas shares based on the IPO price of \$4.50
5 per share is \$4,050,000. Plaintiff and the Class have not received anything for their Adamas shares.
6 Instead, the 900,000 shares were reduced to 800,000 shares with no notice whatsoever to Plaintiff
7 and the Class.
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9 **JURISDICTION AND VENUE**

10 16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
11 1332(a) because there is complete diversity between Plaintiff and all Defendants, including the
12 Scio Individual Derivative Defendants, Adamas Derivative Defendants and the Adamas Class
13 Action Defendants and because the amount in controversy exceeds the sum or value of \$75,000,
14 exclusive of interest and costs.
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16 17. The Court has jurisdiction over each defendant because each defendant is
17 either a corporation that does sufficient business in this District or is an individual who has
18 sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this
19 court permissible under traditional notions of fair play and substantial justice. Further, the Scio
20 Individual Derivative Defendants and the Adamas Individual Derivative Defendants misconduct
21 has harmed Scio, a Nevada Corporation. The Adamas Class Action Defendants have engaged in
22 breaches of fiduciary duties and other serious misconduct in the District. Adamas is also a Nevada
23 corporation.
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26 18. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because nominal
27 defendant Scio and defendant Adamas are incorporated under Nevada state law and many of the
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1 acts and practices complained of herein occurred in this District.

2 19. Further, Sections 10.10(a) and 10.10(b) of the Amended Agreement have express
3 choice of law and forum clauses, respectively, mandating application of Nevada law, and personal
4 jurisdiction and venue in Nevada in any action “arising out of or based upon” the Amended
5 Agreement and the rest of the Adamas Transaction documents.

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7 **PARTIES**

8 **Plaintiff**

9 20. Plaintiff is a current stockholder of Scio common stock and has continuously held
10 Scio common stock since prior to 2014. Plaintiff is also a shareholder of Adamas and has
11 continuously held Adamas common stock since sometime in September 2019. Plaintiff is a citizen
12 and resident of a foreign country, Portugal.

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14 **Nominal Defendant**

15 21. Nominal Defendant Scio is a Nevada corporation which maintained its corporate
16 headquarters at 411 University Ridge, Greenville, SC 29601, Currently, Adamas also lists its
17 corporate headquarters at 411 University Ridge, Greenville, SC 29601. According to its public
18 filings, Scio creates high quality, single-crystal, lab-grown diamonds in a variety of types and
19 colors, including Type IIa diamonds that are finished for fine jewelry or diamond materials that
20 are sliced and shaped for industrial applications. Scio has developed proprietary technology
21 through which high-quality, Type IIa, single-crystal diamond materials are produced using a
22 chemical vapor deposition (“CVD”) process (the “Diamond Technology”). Scio’s primary mission
23 is to become the worldwide leader in the production and sale of high-quality manufactured
24 gemstones.
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Scio Individual Derivative Defendants

22. Defendant McPheely serves as non-executive chairman of the Scio Board and has served in that capacity since June 23, 2014. In 2012, McPheely retired as President of Hartness International after more than 35 years of service. From 2000-2002 he was chairman of PMMI and as of 2016 was still on the Board of Directors of Dorner Manufacturing Corp. McPheely is a graduate of the Thunderbird Graduate School of International Management and received his undergraduate degree from Albion College. Upon information and belief, Defendant McPheely is a citizen of South Carolina.

23. Defendant Leaverton serves as non-executive director of the Board and has served in that capacity since June 23, 2014. From 2003 through the present, he has been a Managing Member, Principal of Blakely Management Company. Serves on the Board of Directors of Awesome Financial Future from 2013 through the present. From 2008 through the present, Leaverton has served as Managing Member of YJ Aviation LLC. He was Chairman of the Board of 7mb Technologies Inc. from October 2013 through January 2018. From October 2010 through October 2017, Leaverton was a Partner of Hollywood Hill Vineyards. He was Chairman of SNW Asset Management LLC from July 2013 through April 2017. Leaverton served as President and CEO of Seattle-Northwest Securities Corporation from April 2012 to July 2013. From 2005 through 2012 he was a Member at CZI Aviation Management, LLC. He also was Regional Director at RBC Wealth Management from 1993 through 2009. From 2006 through 2009, he was President, Private Client Group, RBC Wealth management, at which time he was terminated. According to Mr. Leaverton's LinkedIn profile, he does not even disclose his directorship at Scio or any association with the Company at all, although his LinkedIn profile covers the time frame that he was a Director of Scio. He earned a BS in Chemical Environmental Science from the University

1 of Puget Sound and completed the course work for a BA in Economics. He earned a Master of
2 Science degree in Infrastructure Management from Stanford University. Upon information and
3 belief, Defendant Leaverton is a citizen of Washington.

4 24. Defendant Smoak serves as a non-executive director of the Board of the Company
5 and has served in that capacity since June 23, 2014. Smoak is a founding partner of the law firm
6 Ogletree, Deakins, Nash, Smoak & Stewart and has served on several boards including as
7 Chairman for Supermarket Radio Network; Zumar, LLC; and Consumer Transparency, LLC.
8 Upon information and belief, Defendant Smoak is a citizen of South Carolina.
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10 25. Defendant McGuire has served as Scio's President, Chief Executive Officer and a
11 director of Scio since July 11, 2014. McGuire's experience is in the semiconductor industry, and
12 he served as Sr. VP and GM of the Low-Voltage and Mid Power Analog Business Unit at Fairchild
13 Semiconductor from 2010 to 2013. Prior, he was employed for 23 years at Analog Devices in
14 various roles and from 2007 to 2010 was VP/GM of Analog Devices Digital Signal Processing
15 business. Defendant McGuire is currently serving as Adamas COO and began employment with
16 Adamas on September 1, 2019, well before the Second Addendum was signed. McGuire has been
17 the COO of Adamas since September 1, 2019. According to the Preliminary
18 Prospectus/Registration Statement and Final Prospectus, McGuire served as Scio's CEO from June
19 14, 2014 until its acquisition in September 2019. McGuire has received hundreds of thousands of
20 shares of Adamas stock since becoming Adamas COO. Upon information and belief, Defendant
21 McGuire is a citizen of South Carolina. Defendant McGuire is also an Adamas Individual
22 Derivative Defendant and Adamas Class Action Defendant.
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26 **Adamas Derivative Defendants and Adamas Class Action Defendants**

27 26. Defendant Adamas was incorporated in Nevada on September 6, 2018, for the

1 purpose of acquiring existing technology to seek to efficiently and effectively produce man-made
2 socially and Eco-friendly diamonds. Adamas' stated activities were to center on the acquisition of
3 patented Diamond Technology that can be used to produce finished diamonds for retail jewelry,
4 rough unfinished diamond materials for wholesale and industrial use. At the time of the Proxy
5 Statements, (the Scio Preliminary Proxy Statement and the Scio final Proxy Statement are
6 collectively referred to as the "Proxy Statement."), Adamas represented that it was in the initial
7 phase of purchasing and commercializing the Diamond Technology and its goal is to become a
8 preferred manufacturer of single crystal diamond and a leading global supplier of diamond
9 materials for multiple applications. Adamas hoped to further shape the evolution of various
10 markets for products and to leverage the technical foundation of the Diamond Technology by
11 expanding into strategic partnerships with select industry leaders with distribution channels
12 already in place to capture high value application opportunities.

15 27. Defendant Grdina was the sole officer and director of Adamas at the time of the
16 Adamas Transaction. He continues to have a majority interest in Adamas. Prior to founding
17 Adamas, Grdina was the founder of AMMO, Inc. (OTCQB: POWW), a publicly traded and SEC
18 reporting issuer, where he served from 2016- 2019. From 2012 through 2015 he was a director and
19 executive officer of NOHO, Inc., a publicly traded and SEC reporting issuer. Grdina was the
20 founder and former CEO of Club Jenna, Inc., which was sold to Playboy Enterprises in 2006.
21 While at Playboy Enterprises from 2006 to 2009, he was a Senior Vice President and the President
22 of Production at Playboy responsible for all aspects of Television and Video Production. After
23 serving as a Senior Vice President for Playboy, he went on to create the celebrity blogging
24 sensations TheDirty.com and Kikster.com. Grdina has a checkered past and a long history with
25 law enforcement and regulatory agencies over the last 30 years. Grdina is the founder of Adamas,

1 its largest stockholder and has been the President, CEO and Chairman of the Board since
2 September 2018 and admits that Grdina has significant influence over Board approval.

3 **RELEVANT NON-PARTIES**

4 28. Wavecrest Securities, LLC (“Wavecrest”) provides investment banking services.
5 The Company specializes in capital raising, mergers and acquisitions, financial analytics, and
6 restructuring advisory services. It was incorporated in 2011 and is located at 830 3rd Avenue, New
7 York, NY 10022. Wavecrest acted as the “boutique investment banking firm” that the Scio
8 Individual Derivative Defendants caused Scio to use to pursue strategic alternatives, ultimately
9 resulting in the Adamas Transaction.
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11 29. Best & Flanagan, LLC is a Minnesota based law firm who represented Scio in the
12 Adamas Transaction and thereafter sued Scio for failure to pay its legal fees in connection with
13 the Adamas Transaction. A default judgment was initially entered against Scio and was ultimately
14 satisfied by Scio.
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16 **FIDUCIARY DUTIES OF THE SCIO INDIVIDUAL DERIVATIVE DEFENDANTS AND**
17 **THE ADAMAS INDIVIDUAL CLASS ACTION DEFENDANTS**

18 30. Each Scio Individual Derivative Defendant, by virtue of his/her position as a
19 director and/or officer, owed to Scio and to its stockholders the fiduciary duties of loyalty, candor
20 and care. Similarly, Adamas Individual Class Action Defendants, Grdina, and McGuire, by virtue
21 of his/her position as a director and/or officer of Adamas, owed to Plaintiff and the Class in their
22 capacity as Adamas shareholders the fiduciary duties of loyalty, candor and care. The Scio
23 Individual Derivative Defendants were and are required to act in furtherance of the best interests
24 of Scio and its stockholders so as to benefit all stockholders equally and not in furtherance of their
25 personal interests or benefit. Similarly, the Adamas Individual Class Action Defendants were and
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1 are required to act in furtherance of the best interests of Adamas and its stockholders so as to
2 benefit all stockholders equally and not in furtherance of their personal interests or benefit.

3 31. The Scio Individual Derivative Defendants, because of their positions of control
4 and authority as directors and/or officers of Scio, were able to and did, directly and/or indirectly,
5 exercise control over the wrongful acts complained of herein. Because of their advisory, executive,
6 managerial, and directorial positions with Scio, each Scio Individual Derivative Defendants had
7 knowledge of material non-public information regarding Scio and failed to disclose that
8 information to its own shareholders.
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10 32. Similarly, the Adamas Individual Derivative Defendants, because of their positions
11 of control and authority as directors and/or officers of Adamas, were able to and did, directly
12 and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their
13 advisory, executive, managerial, and directorial positions with Adamas, each Adamas Individual
14 Class Action Defendants had knowledge of material non-public information regarding the Adamas
15 Transaction, including hiding the distribution of the Adamas shares and secretly reducing the
16 amount of shares from 900,000 to 800,000 that Scio had already received from Adamas on
17 September 17, 2019, and failed to disclose that information to its own shareholders, Plaintiff and
18 the Class until well over two years later.
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21 33. To discharge their duties, both the Scio Individual Derivative Defendants and
22 Adamas Individual Class Action Defendants were required to exercise reasonable and prudent
23 supervision over the management, policies, practices, and controls of Scio and Adamas,
24 respectively. By virtue of such duties, the Scio Individual Derivative Defendants and Adamas
25 Individual Class Action Defendants, respectively, were required to, among other things:
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27 a. Exercise good faith to ensure that the affairs of Scio or Adamas (as the case may
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1 be) were conducted in an efficient, business-like manner so as to make it possible
2 to provide the highest quality performance of their business;

3 b. Exercise good faith to ensure that Scio and Adamas, respectively, were operated in
4 a diligent, honest, and prudent manner and complied with all applicable federal and
5 state laws, rules, regulations, and requirements, and all contractual obligations,
6 including acting only within the scope of its legal authority;

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8 c. Exercise good faith in supervising and ensuring the timely preparation, filing,
9 and/or dissemination of financial statements, press releases, audits, reports or other
10 information required by law, and in examining and evaluating any reports or
11 examinations, audits, or other financial information concerning the financial
12 condition of Scio or Adamas (as the case may be);

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14 d. Refrain from unduly benefitting themselves and other Scio insiders and Adamas
15 insiders, respectively, at the expense of Scio or Adamas, respectively;

16 e. Exercise good faith to ensure that Scio's and Adamas' respective communications
17 with the public and with its stockholders are made with due candor in a timely and
18 complete fashion; and

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20 f. When put on notice of problems with business practices and operations, exercise
21 good faith in taking appropriate action to correct the misconduct and prevent its
22 recurrence on behalf of Scio or Adamas, respectively.

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24 34. Scio also has by-laws, a Code of Conduct and corporate governance guidelines, all
25 of which impact the duties and responsibilities of Scio's officers and directors including the Scio
26 Individual Derivative Defendants. The Code of Conduct states in pertinent part:

SCIO'S CODE OF CONDUCT

Expectations

Our Code of Conduct serves as an active reference, describing how we expect our employees, Board members, partners and business associates to conduct themselves in doing business for or with Scio Diamond Technology Corporation (Scio Diamond). ...

Making Ethical Decisions

We all take pride in our work and in the choices we make on behalf of Scio Diamond. These choices may be more difficult to make when we encounter ethical challenges. Our Code helps us recognize and resolve these challenges. When faced with a difficult ethical decision, ask yourself the following questions to determine whether the action you are contemplating is appropriate:

- Am I adhering to the letter and spirit of our Company's policies and all applicable laws and regulations?
- Is my action consistent with Scio Diamond's values and the principles set forth in our Code?
- Would I be acting in the best interests of Scio Diamond, my coworkers and our customers?
- What would my family, friends or neighbors think of my action?
- Would I want my action reported on the front page of a newspaper or on the Internet? ...

Following Our Code

We take the guidelines in our Code seriously and strive to follow them conscientiously at all times. Please note that violations of the law, Scio Diamond policy or our Code may lead to disciplinary action, up to and including termination. In addition, such violations may result in civil or criminal consequences for both the persons involved and Scio Diamond. ...

Accurate Records

When it comes to preparing Scio Diamond's corporate records, honesty and transparency are our guides. Each of us has a responsibility to ensure that the information contained in all of our business records — including our time cards, expense reports, sales records, purchase orders and production records — is full, fair, accurate, timely and understandable. We accomplish this by only providing information that is completed in accordance with our internal control procedures. If you are unsure how to represent information in a Scio Diamond report or document, refer to the Employee Handbook or contact your manager, CEO or CFO.

Our commitment to acting ethically and honestly requires that we engage in legitimate and authorized business transactions. We may never make a false representation on behalf of Scio Diamond, whether verbally or in writing. In

1 addition, we must not hide Scio Diamond funds, mischaracterize Company
2 transactions, create unrecorded fund accounts or knowingly allow similar illegal
activities to occur. ...

3 **Records Retention**

4 Properly creating, maintaining and destroying records are important aspects of
5 keeping accurate business records. We must retain all Scio Diamond records in
6 conformity with the guidelines set forth in our records retention schedules, as well
as U.S. and local laws. These records retention schedules dictate the length of time
7 companies must keep business records, as well as the way in which these records
are to be destroyed.

8 If you are notified by a Company lawyer that you possess records relevant to
9 anticipated or pending litigation, an investigation or audit, follow the guidelines set
10 forth in that notification. Do not destroy, alter or conceal any covered documents
(including computer files, e-mails and disks) in response to or in anticipation of any
such Company notification, government proceeding or lawsuit. ...

11 **What is a Conflict of Interest?**

12 A conflict of interest occurs when personal interests interfere with, or appear to
13 interfere with, our ability to make objective judgments in the best interest of Scio
Diamond. Avoiding actual or apparent conflicts of interest creates and sustains the
14 trust of our customers and other business partners, our fellow employees and the
public, so it is critical for all of us to be vigilant in this area. While it is impossible
15 to address every situation where a conflict of interest may arise, the following
sections address the most common scenarios.

16 **Personal Gain from Corporate Opportunities**

17 During the course of our employment at Scio Diamond, we may learn about business
18 opportunities in which we are personally interested. We may not pursue or direct a
19 third party to pursue any opportunity we learn about in connection with our
employment or through the use of Company property or information, unless we have
20 obtained written approval from the Company Legal department.

21 **Doing Business with Family Members**

22 We must be cautious when one of our immediate family members works for a
23 company with which Scio Diamond does or intends to do business. If you find
yourself in such a situation and your job involves making business decisions in
24 relation to that company, you must disclose the situation immediately to your
manager, your supervisor, or the Company Legal department.

25 **Investing in Outside Businesses**

26 A conflict of interest may arise if you or a family member holds a financial interest
27 in a privately owned enterprise with which Scio Diamond does business or
competes. The potential for a conflict of interest in this situation generally depends

1 on the size of your investment, your role at Scio Diamond and the business
2 relationship between Scio Diamond and the other company. You must obtain prior
3 written approval from the Company Legal department before making such an
4 investment.

5 **Outside Employment**

6 We must be careful to ensure that our outside interests and activities do not conflict
7 with our obligations to Scio Diamond. Since outside employment may make us
8 appear biased or harm our ability to make decisions in the best interest of Scio
9 Diamond, we may not be employed by, work as a consultant for, or be affiliated with
10 a Scio Diamond competitor, customer or supplier without prior written approval
11 from the Company Human Resources department and Legal department.

12 **Securities Trading**

13 During the course of our employment at Scio Diamond, we may come to know
14 information about our Company or our business partners before it is disclosed to the
15 public. This information is often called “inside” or “material, nonpublic”
16 information. According to securities laws, information is considered “material” if it
17 would influence an investor to buy, sell or hold the securities of the company about
18 which the information relates. Information is “nonpublic” until it has been publicly
19 disclosed and a sufficient amount of time has passed for the securities market to
20 absorb the information.

21 Because we work for a U.S. company that is publicly traded, we are obligated to
22 understand and comply with the laws that relate to the use of inside information. In
23 general, these laws state that we may not buy or sell a company’s stock if we hold
24 inside information about that company. This practice, which is known as “insider
25 trading,” violates both our Code and the law. Some common examples of “inside”
26 information may include discussions of mergers and acquisitions; changes in a
27 company’s senior management or executive structure; or sensitive corporate
28 financial information.

We are also prohibited from “tipping” or sharing such information with a family
member or friend who then buys or sells a security based upon that information. In
such a situation, the person disclosing the information may be liable for violating
securities laws, even if he or she did not personally make a trade.

In addition, the Board of Directors, Company Officers and any employees in
possession of non-public information will strictly adhere to any trading “blackout”
window as published by the CFO.

25 **Fraud and Theft**

26 By working for Scio Diamond, we have made a commitment to each other, our
27 Company and our shareholders to protect and use our Company’s assets
28 appropriately and for business purposes. Such assets include physical property,
intellectual property, information technology and our Company’s reputation. Scio

1 Diamond will promptly investigate, and where appropriate, prosecute reported
2 incidents of fraud or theft of its assets. You should promptly report any suspected
3 theft, loss or abuse of Company assets to your manager or supervisor, or InnovateHR
4 or Legal Counsel.

5 **Physical Assets**

6 We all work hard to create and manage our Company's physical assets. These assets
7 include Scio Diamond's products, money, facilities, vehicles and equipment. We
8 must safeguard this highly valuable property and protect it at all times. We each
9 have a personal responsibility to ensure that we use our Company's assets only to
10 promote Scio Diamond's business interests.

11 **Intellectual Property**

12 Scio Diamond's intellectual property is at least as valuable as our physical assets, if
13 not more so, and we must protect it carefully. Intellectual property (or "IP") includes
14 patents, trademarks, copyrights and trade secrets, as well as technical data and
15 software developed under or used in support of customer contracts.

16 In general, Scio Diamond retains exclusive ownership of the IP in any idea, process,
17 trademark, invention or improvement we conceive in relation to our work with our
18 Company. Our obligation to protect intellectual property continues even after our
19 employment ends. A "trade secret" is information that generally is not known or
20 reasonably ascertainable by the public and gives Scio Diamond a competitive
21 advantage. ...

22 **Statements to the Media and Investment Analysts**

23 It is important for Scio Diamond to provide the public with accurate and consistent
24 information regarding our operations. We may only make public statements
25 regarding issues or matters for which we are authorized spokespersons. If a member
26 of the media contacts you about a Scio Diamond matter, refer him or her to either
27 the Director of Public Relations or the Chief Executive Officer. If an analyst
28 approaches you, you should refer him or her to either the Director of Investor
Relations, the Chief Financial Officer or the Chief Executive Officer.

35. The Company's Amended and Restated Bylaws (the "Bylaws") call for an annual
meeting and that the business and affairs of the Company shall be managed by its Board of
Directors.

36. The Company also has Corporate Governance Guidelines which are intended to
provide a structure within which the Company's directors and management can pursue Scio's
objectives for the benefit of its stockholders. The Guidelines also provide that the Board serves as

1 the ultimate decision-making body of the Company, with a few exceptions, and selects and
 2 oversees senior management who is charged with running the day-to-day operations of the
 3 Company. The Board also has responsibility to monitor and manage potential conflicts of interest
 4 and to ensure the integrity of financial information. The Code of Conduct, Bylaws, and Corporate
 5 Governance Guidelines were all adopted by the Scio Individual Derivative Defendants, who made
 6 up a majority of the Scio Board. As the misconduct alleged throughout illustrates, the Scio
 7 Individual Derivative Defendants have violated numerous provisions of the duties and
 8 responsibilities mandated to be followed by the Board.

10 37. Unlike Scio, at the time of the filing of the Amended Complaint, Adamas had no
 11 Code of Conduct or Corporate Governance Guidelines. Adamas does have by-laws that mandate
 12 annual meetings and that the business of Adamas shall be managed by its Board of Directors:

14 SECTION 2.1 ANNUAL MEETINGS. Annual meetings of the stockholders
 15 shall be held each year on a date and time designated by the Board of Directors. In
 16 the absence of such designation, the annual meeting shall be held on the second
 17 Tuesday of July each year at 10:00 a.m. At the annual meeting, the stockholders
 18 shall elect by vote a Board of Directors and transact such other business as may
 19 properly be brought before the meeting.

20 38. The Adamas by-laws provide that the business affairs of Adamas shall be managed
 21 by its Board of Directors:

22 SECTION 3.1 GENERAL POWERS. The business of the Corporation shall be
 23 managed by its Board of Directors, which may exercise all such powers of the
 24 Corporation and do all such lawful acts and things not otherwise required by statute,
 25 by the Articles of Incorporation or by these Bylaws to be exercised or addressed by
 26 the common stockholders.

BACKGROUND

27 39. Led by Scio Individual Derivative Defendant McPheely, the Scio Individual

1 Derivative Defendants (other than Defendant McGuire who was already acting CEO), took control
2 of Scio in mid-2014 in a proxy fight. McPheely dubbed the campaign “Save Scio.” During their
3 tenure, Scio has gone from a publicly traded company that timely filed its quarterly and annual
4 reports with the SEC, kept its corporate status in Nevada current and had ownership of valuable
5 intellectual property with a prior market capitalization of approximately \$50 million, to one that :
6 (i) secretly ceased production in October 2017; (ii) had the registration of its shares revoked by the
7 SEC in August 2019 for failing to timely file its periodic reports as required by the federal
8 securities laws; (iii) had its corporate status in Nevada revoked and/or dissolved in violation of
9 Nevada law; (iv) sold off all of its assets in the Adamas Transaction; (v) agreed to a reduction of
10 100,000 shares of the 900,000 Adamas shares Scio received (for the benefit of its shareholders) in
11 the Adamas Transaction in February 2020 after the Adamas Transaction closed in October 2019
12 and Scio had already received the 900,000 Adamas shares back in September 2019; (vi) failed to
13 exercise Scio’s right to comment on the Preliminary Prospectus/Registration Statement;(vi) were
14 sued by Best & Flanagan for its legal fees associated with the Adamas Transaction and had a
15 default judgment entered against it. Scio is now worth virtually nothing, but for the 900,000
16 Adamas shares (purportedly 800,000 based on the February 2020 secret reduction).

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20 40. With Scio’s financial condition and performance deteriorating because of the
21 actions of the Scio Individual Derivative Defendants, according to the Proxy Statements and at the
22 direction of the Board, Scio management formally began considering strategic alternatives in the
23 Spring of 2017. As represented in the Proxy Statements, at that time Scio engaged a boutique New
24 York investment banking firm, Wavecrest, who had aided the Scio Individual Derivative
25 Defendants in the Save Scio campaign and whose principals owned shares of Scio stock.
26 Wavecrest allegedly helped Scio develop and shop a special investment vehicle and consider

1 various license agreements. As set forth in the Proxy Statements, through Wavecrest, the Company
2 had introductory discussions with purportedly 14 companies in the diamond industry. The
3 investment structure, a Special Purpose Vehicle, SPV, was designed to raise \$1.7 million in 15
4 units, to provide working capital for the Company. Participants in the SPV would receive
5 discounted and a guaranteed supply of lab-grown diamonds. The Proxy Statement indicated that
6 two of the discussions advanced, but ultimately did not result in an agreement.
7

8 41. According to the Proxy Statements, in the fall of 2017, Scio also considered a
9 strategic licensing deal with a diamond producer, but ultimately decided that the licensing would
10 not provide the necessary capital for Scio's plans. Throughout the fall of 2017 and early 2018,
11 Scio also considered debt restructuring. Scio entertained proposals from at least 3 groups, groups
12 who proposed Scio equipment and IP as security. Unfortunately, Scio could not find a solution
13 which would both replace its secured lenders and provide the necessary working capital.
14

15 42. Scio continued evaluating potential strategic options. The Proxy Statements
16 represented that during late 2017 and 2018, Scio had serious discussions with 6 different groups.
17 Three of these six groups performed some level of due diligence of Scio. One group was an
18 investment group with extensive experience in advanced crystalline materials, ultimately, they
19 were unable to raise capital to execute a deal. The proposed terms were \$5.5 million in cash and
20 capped royalties for sales of Scio's proprietary growers.
21

22 43. According to the Proxy Statements, the second group was a public company
23 involved in advanced materials. After discussions of IP strategies and the industrial market, it was
24 represented that the public company was not able to put in a timely offer. According to the Proxy
25 Statements, the third group, Adamas, is an investment group with experience in turning around
26 distressed companies. On November 30, 2018, Scio's Board, a majority of which consisted of the
27

Scio Individual Derivative Defendants, approved the deal with Adamas, and the definitive agreements were returned executed on December 5, 2018. The Amended Agreement and ancillary documents were entered into effective January 31, 2019 and filed with the SEC on February 7, 2019.

THE ADAMAS TRANSACTION

44. On December 11, 2018, the Scio Individual Derivative Defendants caused Scio to file a Form 8-K with the SEC announcing a proposed transaction with Adamas whereby Adamas would purchase all of Scio's assets, including the intellectual property, in exchange for cash and stock valued at \$5.8 million. With regard to the transaction, the Form 8-K stated:

1.10 Entry into a Material Definitive Agreement.

The Company has entered into an Asset Purchase Agreement, dated as of November 30, 2018, with Adamas One Corp., a Nevada corporation ("Adamas"), pursuant to which Adamas has agreed to purchase all of the assets of the Company in exchange for the following consideration:

1. Satisfaction of all outstanding secured debt of the Company in the total amount of approximately \$3.3 million over the eighteen (18) months following closing.

2. Issuance to the Company of 350,000 shares of Adamas common stock, with a guaranteed minimum resale price for the Company of \$2.00 per share, to be used to settle unsecured debt of the Company in excess of \$3,000,000.

3. **Issuance to the Company of 900,000 of Adamas common stock** to be distributed to shareholders of the Company upon liquidation of the Company. The shares will be registered with the Securities and Exchange Commission, pursuant to a Registration Rights Agreement entered into between the Company and Adamas, and subject to lockup/leakout provisions which will allow the shareholders to sell such shares over the two year period following closing, on a graduated basis.

Consummation of the transaction, and distribution of the Adamas common stock, are subject to satisfaction of numerous conditions, including, but not limited to, shareholder approval by the Company, filing and effectiveness of a registration statement for the Adamas shares to be distributed to Company shareholders and other conditions. The Company will be providing additional information in connection with the shareholder meeting to be held to approve the transaction. (Emphasis added).

1 The Form 8-K was signed by Defendant McGuire on December 10, 2018.

2 45. Purportedly, the Asset Purchase Agreement (“Agreement”) provided for all of the
3 Company’s secured debt to be paid from the cash portion of the transaction with 350,000 shares
4 converted into cash at a minimum \$2.00 per share (or \$700,000) to be used to settle the unsecured
5 debt and 900,000 shares of Adamas stock to be ultimately distributed to Scio shareholders.
6 Conditions to consummation of the transaction included, but not limited to, Scio shareholder
7 approval and the filing and effectiveness of a registration statement for the 900,000 Adamas shares
8 that were to be distributed to Scio shareholders.
9

10 46. Suspicious trading in Scio stock occurred on November 28, 2019, two days prior to
11 Scio signing the deal. Trading volume was almost 800,000 shares, well above the average volume
12 of approximately 25,000-30,000 shares per day. The only persons who knew the deal was going
13 to be signed were the Scio Individual Derivative Defendants, other Scio officer and/or directors,
14 Wavecrest, and the Adamas Individual Derivative Defendants. No other explanation for the
15 unprecedented trading volume in Scio stock is plausible other than it was the result of insider
16 trading.
17

18 47. On February 7, 2019, the Scio Individual Derivative Defendants caused the
19 Company to file a Form 8-K issued in connection with the proposed transaction with Adamas. The
20 terms of the Adamas Transaction had substantially changed to the detriment of Scio shareholders.
21 The Form 8-K stated:
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24 **Entry into a Material Definitive Agreement.**

25 The Company has entered into an Amended Asset Purchase Agreement, dated as
26 of February 4, 2019, with Adamas One Corp., a Nevada corporation (“Adamas”),
27 pursuant to which Adamas has agreed to purchase all of the assets of the Company
28 in exchange for the following consideration:

- 1 1. Satisfaction of all outstanding secured debt of the Company in the total amount
- 2 of approximately \$3.55 million over the eighteen (18) months following
- 3 closing.
- 4 2. Issuance to the Company of a total of 1,250,000 shares of Adamas common
- 5 stock. 350,000 of such shares will be sold by the Company in a private sale
- 6 within 20 days after Closing with a guaranteed minimum resale price for the
- 7 Company of \$2.00 per share, to be used to settle unsecured debt of the Company
- 8 in excess of \$3,000,000.
- 9 3. **The remaining 900,000 of Adamas common stock will be held by the**
- 10 **Company for an undetermined time, in the discretion of the Board.** The
- 11 shares will be subject to a Registration Rights Agreement entered into between
- 12 the Company and Adamas, and subject to lockup/leakout provisions which will
- 13 allow their sale over a two year period following Closing, on a graduated basis.
- 14 (Emphasis added).
- 15 4. Assumption of certain limited liabilities of the Company.

16 This Amended Asset Purchase Agreement amends and supersedes the Asset
 17 Purchase Agreement entered into between the parties dated as of November 30,
 18 2018, in its entirety. Consummation of the transaction is subject to satisfaction
 19 of numerous conditions, including, but not limited to, shareholder approval by
 20 the Company and other conditions. The Company will be providing additional
 21 information in connection with the shareholder meeting to be held to approve
 22 the transaction.

23 The Form 8-K was signed by Scio Individual Defendant McGuire.

24 48. The terms of the transaction had been changed dramatically. Instead of the 900,000
 25 shares being distributed to shareholders and Adamas's obligation to have the shares registered with
 26 the SEC as a condition of closing, the shares were to be "held by the Company for an undetermined
 27 time, in the discretion of the Board." The obligation of registering the shares with the SEC prior
 28 to consummation of the transaction had disappeared.

 49. That same day, the Scio Individual Derivative Defendants caused the Company to
 file the Scio Preliminary Proxy Statement with the SEC reiterating the same terms as set forth in
 the Form 8-K. It also contained additional information about the Adamas Transaction. The Scio

1 Preliminary Proxy Statement disclosed for the first time that the Scio Individual Derivative
2 Defendants were part of a group that had invested in secured debt of the Company and would be
3 paid back (except for interest) as part of the cash consideration to be received in the Adamas
4 Transaction. Further, the Scio shareholders were no longer going guaranteed to receive their pro
5 rata portion of the 900,000 Adamas shares which were mandated by the Agreement to be registered
6 with the SEC prior to the Adamas Transaction being consummated.
7

8 50. Now that Adamas stock was no longer required to be distributed to shareholders
9 and registered with the SEC as a condition of closing, the terms concerning the registration by
10 Adamas of the 900,000 shares also changed. The Scio Preliminary Proxy Statement represented
11 that the registration of the 900,000 Adamas shares was to be done in stages if requested by Scio as
12 follows: (i) Adamas to file registration statement for 300,000 shares 90 days after Scio's request;
13 (ii) At Scio's request, Adamas to file a new registration statement to cover another 300,000 shares
14 no less than 9 months after the first registration statement; and (iii) At Scio's request, Adamas to
15 file a new registration statement to cover the remaining 300,000 shares no less than 15 months
16 after the first registration statement. As to the Lock-Up/Leakout Provisions, up to 20% of the
17 Adamas stock can be disposed of between months 9 and 18 months after closing; up to 50% of the
18 Adamas stock can be disposed of between months 18 and 24 after closing; and up to 100% of
19 Adamas stock can be disposed of after month 24.
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22 51. Further, instead of liquidating Scio after the 900,000 shares were distributed to the
23 Company as part of the Amended Agreement, the Scio Preliminary Proxy Statement now disclosed
24 that "[t]he Board intends to consider all options available to the Company regarding its future
25 business, including engaging in active business activities." The Scio Preliminary Proxy Statement
26 also disclosed some shocking news for the first time that "[t]he Company currently conducts no
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1 active production operations and has not conducted active production since October 2017.” The
2 vote for shareholder approval of the Adamas Transaction was set for March 8, 2019. No
3 shareholder vote was conducted on March 8, 2019.

4 52. On May, 17, 2019, the Company filed the Scio Final Proxy Statement. The
5 shareholder vote was rescheduled for June 7, 2019. Included with the Scio Final Proxy Statement
6 was the representation that under Nevada law the Board had the right to remain private and
7 independent if it determined that it was in the best interests weighing a number of different factors.
8 It was further disclosed the identity of the officers and directors who held the secured debt, which
9 includes all four of the Scio Individual Derivative Defendants. Thus, the only shareholders who
10 were guaranteed cash compensation as part of the Adamas Transaction were Company insiders,
11 the four Scio Individual Derivative Defendants. The shareholders received no cash and Scio
12 received 900,000 shares of Adamas stock for the benefit of its shareholders. The vote on the
13 Adamas Transaction purportedly took place at the meeting on June 7, 2019, and then it was
14 reconvened in August 2019, and the shareholders purportedly approved the Adamas Transaction
15 with it closing in October 2019, according to Adamas. No information has ever been publicly
16 disclosed by the Scio Individual Derivative Defendants concerning the results of the shareholder
17 votes, nor have they caused Scio to disclose it. Rather, it was first disclosed in a lawsuit buried in
18 Minnesota state court brought by Scio’s counsel, Best & Flanagan, retained by the Scio Individual
19 Derivative Defendants on behalf of Scio to represent it in the Adamas Transaction. That lawsuit
20 was filed November 25, 2020, more than a year after the Adamas Transaction purportedly closed.
21 None of this material information has ever been communicated to Scio shareholders (and Plaintiff
22 and the Class) by the Scio Individual Derivative Defendants and Adamas Class Action Defendants
23 except for the recent filing of the Adamas Preliminary Prospectus/Registration Statement with the
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1 SEC on May 31, 2022, approximately three years later, and the Final Prospectus recently filed in
2 December 2022. In other words, Scio shareholders have been completely in the dark about the
3 Company other than its last SEC filing in August 2019 of the SEC order revoking the registration
4 of Scio's shares at the request of the Scio Individual Derivative Defendants. In fact, after the
5 Adamas Transaction had been publicly announced but prior to its closing, Adamas stated that the
6 900,000 shares needed to be priced at a minimum at \$4.00 per share to be registered and publicly
7 traded on an exchange and that would be no problem. Ultimately, they were priced at \$4.50 per
8 share.
9

10 **SCIO BOARD MEMBERS AND THE CFO RESIGN**

11 53. After the signing of the Amended Agreement on January 31, 2019, two of the six
12 Scio Board members resigned. Scio filed a Form 8-K on February 13, 2019, announcing that "on
13 February 7, 2019, Scio Diamond Board of Directors formally acknowledges the resignations of
14 Ben Wolkowitz and Bruce Likely from the Board ..." This left the four Scio Board members who
15 are the Scio Individual Derivative Defendants in this Action.
16

17 54. Subsequently, on May 31, 2019, Scio filed a Form 8-K disclosing that the Company
18 had received a letter of resignation from Jonathan Pfohl, CFO, dated May 6, 2019. This left Scio
19 Individual Derivative Defendant McGuire as the remaining officer of Scio.
20

21 **SCIO HAS THE REGISTRATION OF ITS SECURITIES VOLUNTARILY REVOKED** 22 **BY THE SEC**

23 55. Beginning on June 29, 2016, Scio began missing the scheduled filing dates for its
24 periodic reports required by the SEC, the Form 10-Qs and Form 10-Ks. On June 29, 2016, the Scio
25 Individual Derivative Defendants caused Scio to file Form 12b-25, Notification of Late Filing in
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27

1 connection with its Form 10-K for Fiscal Year ended March 31, 2016. The Company filed its Form
2 10-K late on July 14, 2016.

3 56. The Company timely filed its Form 10-Q for the first quarter ending June 30, 2016,
4 on August 15, 2016. It did not timely file its Form 10-Q for the second quarter ended September
5 30, 2016. On November 14, 2016, the Scio Individual Derivative Defendants caused the Company
6 to file a Form 12b-25, Notification of Late Filing in connection with its Form 10-Q for the second
7 quarter ended September 30, 2016. It was subsequently untimely filed on November 23, 2016. The
8 Company timely filed its Form 10-Q for the third quarter ended December 31, 2016, on February
9 14, 2017. This would be the last periodic report ever filed by the Company.
10

11 57. The Scio Individual Derivative Defendants filed Form 12b-5, Notification of Late
12 Filing in connection with its: (i) Form 10-K for Fiscal Year ended March 31, 2017 (filed Form
13 12b-25 on June 30, 2017); (ii) Form 10-Q for first quarter ended June 30, 2017 (filed Form 12b-
14 25 on August 14, 2017); (iii) Form 10-Q for second quarter ended September 30, 2017 (filed Form
15 12b-25 on November 15, 2017); and (iv) Form 10-Q for third quarter ended December 31, 2017
16 (filed Form 12b-25 on February 15, 2018). The Company never filed the periodic reports (or any
17 subsequent periodic reports).
18
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20 58. On August 9, 2018, subsequent to the Adamas Transaction, the SEC issued an
21 Order in *In the Matter of Scio Diamond Technology Corp.*, Administrative Proceeding File No. 3-
22 19327, revoking registration of the Company's securities pursuant to its authority under Section
23 12(j) of the Exchange Act (the "Revocation Order"). The Revocation Order stated in pertinent part:
24

25 On the basis of this Order and Respondent's Offer, the Commission finds
26 that:

27 A. Scio Diamond Technology Corp., a Nevada corporation based in
28 Greenville, South Carolina (CIK No. 0001488934), purports to have developed
technology to manufacture singlecrystal, lab-grown diamonds. The common stock

1 of Scio has been registered under Section 12(g)2 of the Exchange Act since
2 October 2011. It is currently quoted on OTC Link (“SCIO”), operated by OTC
Markets Inc.

3 B. Scio has failed to comply with Section 13(a) of the Exchange Act and
4 Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with
5 the Commission in that it has not filed an Annual Report on Form 10-K since July
6 14, 2016 for the period ended March 31, 2016 or periodic or quarterly reports on
Form 10-Q for any fiscal period subsequent to its fiscal quarter ending December
31, 2016. ...

7 In view of the foregoing, the Commission finds that it is necessary and
8 appropriate for the protection of investors to impose the sanction specified in
Respondent’s Offer.

9 Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange
10 Act, that registration of each class of Respondent’s securities registered pursuant
11 to Section 12 of the Exchange Act be, and hereby is, revoked. The revocation is
effective as of August 9, 2019.

12 59. The Scio Individual Derivative Defendants downplayed the Company’s loss of the
13 registration of its shares, with Scio Individual Derivative Defendant McGuire commenting, “[t]he
14 deregistration has no impact on shareholders’ ownership of Scio or their interests in the [Adamas
15 Transaction].”

17 **SCIO SHAREHOLDERS ARE NEVER TOLD THAT THEY RECEIVED A PRO**
18 **RATA DISTRIBUTION OF ADAMAS SHARES IN SEPTEMBER 2019**
19 **PURSUANT TO THE ADAMAS TRANSACTION**

20 60. According to the Adamas Preliminary Prospectus/Registration Statement filed with
21 the SEC on May 31, 2022, Adamas issued 1.5 million shares of Adamas stock to Scio, and HG,
22 on September 17, 2019, with 900,000 of those shares for the benefit of Scio shareholders in
23 connection with the Adamas Transaction.

24 61. On May 17, 2019, three weeks prior to the shareholder vote to approve the Adamas
25 Transaction scheduled for June 7, 2019, the Scio Individual Derivative Defendants caused Scio to
26

1 issue its Final Proxy Statement indicating to Scio shareholders that “the Board intends to hold [the
2 900,000 Adamas shares] indefinitely in order to permit the stockholders to benefit from the
3 business going forward” and that “[t]he Board intends to consider all options available to [Scio]
4 regarding its future business, including in active business activities.” There was no indication by
5 the Scio Individual Derivative Defendants that three months later in the latter part of September
6 2019 (and prior to the October 17, 2019, closing) that Scio shareholders would receive a pro rata
7 distribution of the 900,000 Adamas shares. To date, Scio shareholders have never been informed
8 that they received a pro rata distribution of Adamas stock by either the Scio Derivative Defendants
9 or the Adamas Class Action Defendants. This information was only discovered on March 8, 2022,
10 subsequent to the filing of this Action, when Scio Individual Derivative Defendant (and Adamas
11 Individual Class Action Defendant) McGuire emailed Plaintiff’s counsel prior to seeking
12 representation and informed Plaintiff’s counsel that the Adamas shares had been distributed
13 sometime in September 2019. The failure to inform the Scio shareholders (and subsequently the
14 Class) of the pro rata distribution is a breach of fiduciary duty by both the Scio Individual
15 Derivative Defendants and the Adamas Class Action Defendants.

16
17
18
19 62. Further, the Scio Individual Derivative Defendants caused or permitted Scio to fail
20 to seek registration of the Adamas shares pursuant to the Amended Registration of Rights
21 Agreement requesting Adamas to seek registration with the SEC of the Adamas shares. Without
22 knowledge that they were now individual Adamas shareholders, Scio shareholders were unaware
23 that they could exercise their rights under the Amended Registration of Rights Agreement to
24 request to have the shares registered.

25
26 **THE 900,000 SHARES OF ADAMAS STOCK RECEIVED IN THE ADAMAS**
27 **TRANSACTION WAS SECRETLY REDUCED TO 800,000 SHARES**

63. Unbeknownst to the Scio shareholders (and Plaintiff and the Class), on February 3, 2000, Adamas Individual Derivative Defendant Grdina (and Adamas Individual Class Action Defendant), and Scio Individual Derivative Defendant McGuire (and Adamas Individual Class Action Defendant) entered into the Second Addendum. The Second Addendum provided for a reduction of the 900,000 Adamas shares already received by Scio in September 2019 and purportedly distributed to shareholders later that month to 800,000 shares, a reduction of 100,000, or over 11%, a substantial amount.

64. Section 2.06 of the Amended Agreement stated as follows:

“Section 2.06 Purchase Price. The aggregate purchase price for the Purchased Assets shall be (i) the cancellation of the Secured Debt, plus (ii) the issuance of one million two hundred fifty thousand (1,250,000) shares of Buyer’s common stock (the “Shares”) to Seller, with nine hundred thousand (900,000) of such Shares subject to the terms of the [Amended] Registration of Rights Agreement ..., (iii) the assumption of the Assumed Liabilities ((i), (ii), and (iii) collectively, the “Purchase Price”).

65. Pursuant to the Second Addendum, Section 2.06 now reads:

Section 2.06 Purchase Price. The aggregate purchase price for the Purchased Assets shall be (i) the cancellation of the Secured Debt, plus (ii) the issuance of one million two hundred fifty thousand (1,250,000) shares of Buyer’s common stock (the “Shares”) to Seller, with eight hundred thousand (800,000) of such Shares subject to the terms of the [Amended] Registration of Rights Agreement ..., (iii) the assumption of the Assumed Liabilities ((i), (ii), and (iii) collectively, the “Purchase Price”).”

66. The Second Addendum made the reduction retroactive to the execution of the Amended Agreement on January 31, 2019. It was signed by Adamas Individual Derivative Defendant (and Adamas Individual Class Action Defendant) on behalf of Adamas and Scio Individual Derivative Defendant (and Adamas Individual Class Action Defendant) McGuire on behalf of Scio as Scio CEO, while serving simultaneously serving as Adamas COO, a prima facie

1 conflict. Where the 100,000 shares came from is a mystery given that the Adamas shares had
2 already been distributed to Scio and its shareholders in September 2019.

3 67. Contrary to the representation in the Second Addendum that McGuire was acting
4 as Scio CEO when he executed the Second Addendum, according to the Adamas Preliminary
5 Prospectus/Registration Statement and Final Prospectus, McGuire was only Scio CEO (and
6 President) from June 2014 “until its acquisition by our company in September 2019”. Thus,
7 McGuire was not CEO when he signed the Second Addendum.

8
9 68. The Second Addendum was first disclosed to Scio shareholders and the Class on
10 May 31, 2022, well over two years after it was executed, when Adamas filed the Adamas
11 Preliminary Prospectus/Registration Statement. It appeared there as an exhibit for the first time.
12 No other disclosure privately or publicly has been made.

13
14 **SCIO HAS ITS CORPORATE STATUS IN NEVADA REVOKED AND/OR**
15 **DISSOLVED IN VIOLATION OF NEVADA CORPORATE LAW**

16 69. According to publicly available Nevada state records, Scio’s corporate status (its
17 charter) was revoked when it failed to file its annual filing on September 30, 2019. Based on NS
18 78.175(2), Scio’s charter was revoked “[o]n the first day of the first anniversary of the month
19 following the month in which the filing was required, the charter of the corporation is revoked and
20 its right to transact business has been forfeited.” Its most likely that the revocation took place in
21 October 2019.

22
23 70. Nevada corporate law also provides that where the charter is revoked, the assets
24 of the corporation must be put into a trust and held by the directors. NS 78.175(5) provides in
25 pertinent part:

26 If the charter of a corporation is revoked and the right to transact business
27 is forfeited as provided in subsection 2, **all the property and assets of the**

defaulting domestic corporation must be held in trust by the directors of the corporation ... [Emphasis added].

71. With the revocation taking place in approximately October 2019 (and the Second Addendum signed in February 2020 several months subsequent to the revocation), the remaining assets (if any) and the Adamas shares still held by Scio as of October 2019 were required to be placed in trust and held by the Scio Individual Derivative Defendants, thereby thwarting the hidden reduction pursuant to the Second Addendum, notwithstanding McGuire's conflict and lack of authority to execute the Second Addendum on behalf of Scio, as the Company's CEO.

72. Alternatively, and upon information and belief, Scio was dissolved. Under Nevada corporate law: (i) the Board must recommend the dissolution to the stockholders; and (ii) provide notice to shareholders. NRS 78.580(3) provides in pertinent part:

If the corporation has issued stock, the directors must recommend the dissolution to the stockholders. ... Unless the dissolution is to be approved by written consent pursuant to NRS 78.320, the corporation shall notify each stockholder, whether or not entitled to vote on dissolution, of the proposed dissolution and the stockholders entitled to vote must approve the dissolution. If the dissolution is approved by written consent pursuant to subsection 2 of NRS 78.320, the corporation shall notify each stockholder whose written consent was not solicited of the dissolution, in writing, not later than 10 days after the effective date of the dissolution.

73. The Scio Individual Derivative Defendants failed to comply with NRS 78.580(3) and never provided notice to Scio shareholders as mandated by the statute.

74. Once a company is dissolved pursuant to NRS 78.580 the directors become trustees with the following duties pursuant to NRS.590: (i) full power to prosecute and defend suits, actions, proceedings and claims of any kind or character by or against the corporation, (ii) to enable the corporation gradually to settle and close its business; (iii) to collect its assets; (iv) to collect and discharge its obligations; (v) to dispose of and convey its property; (vi) to distribute its money

1 and other property among the stockholders ...

2 75. The Scio Individual Derivative Defendants have failed miserably. They caused
3 and/or permitted the Company to have a default judgment entered against it and was unrepresented
4 during those proceedings. The Scio Individual Derivative Defendants also permitted the secret
5 reduction of Adamas shares from 900,000 shares to 800,000 shares pursuant to the Second
6 Addendum.
7

8 **SCIO GETS SUED BY ITS OWN LAW FIRM AND HAS A DEFAULT JUDGMENT**
9 **ENTERED AGAINST IT**

10 76. On November 25, 2020, the Company's former law firm sued the Company for
11 failure to pay its legal fees, including those that incurred in connection with the Adamas
12 Transaction. The case is docketed as *Best & Flanagan LLP v. Scio Diamond Technology*
13 *Corporation*, Case No. 27-CV-20-15599 (Dist. Ct. 4th Jud. Dist. Minn).
14

15 77. The *Best & Flanagan* Complaint alleges that the Company owed the law firm over
16 \$700,000 as of November 1, 2019, and that the parties had entered into a settlement agreement
17 (the "Settlement Agreement") and a security agreement (the "Security Agreement") that same day.
18

19 78. Under the Settlement Agreement, the Company agreed to pay \$133,000 by
20 November 25, 2019. The Security Agreement secured the payment and as part of the collateral
21 securing the debt was the 900,000 shares of Adamas stock. According to the *Best & Flanagan*
22 Complaint, on or about December 10, 2019, the Company paid \$75,000, leaving a balance of
23 \$58,000, the amount requested by the lawsuit. The *Best & Flanagan* Complaint also alleged that
24 the Adamas Transaction closed on August 29, 2019.
25

26 79. The Scio Individual Derivative Defendants failed to answer or otherwise respond
27 to the *Best & Flanagan* Complaint and a default judgment was entered against the Company.
28

1 Although Scio had not answered or otherwise responded to the Best & Flanagan Complaint, Scio
2 Individual Derivative Defendant McGuire appeared in court. Being a non-lawyer, the Court
3 instructed McGuire that a corporation had to be represented by an attorney. In a footnote to the
4 Order for Judgment entered on January 7, 2021, the Court wrote: “The Court informed Mr.
5 McGuire that a corporation must be represented by an attorney in legal proceedings. ... Since no
6 attorney appeared at the hearing on behalf of the Defendant, the Court can treat this as a failure to
7 appear.” (Citations omitted). Ultimately, on or about June 25, 2021, Scio satisfied the judgment
8 by paying the law firm the remaining balance of \$58,000 and also attorneys’ fees and interest
9 making the total paid \$63,455.50. None of this has ever been publicly disclosed by the Scio
10 Individual Derivative Defendants or the Adamas Class Action Defendants, Scio, or anybody else.
11 The only place this information was found was in the obscure lawsuit brought in Minnesota state
12 court by Best & Flanagan. It has never been widely disseminated. Where the Scio Individual
13 Derivative Defendants got the funds to satisfy the default judgment against the Company is
14 unknown since the funds were not paid until June 2021, almost two years after the Adamas
15 Transaction purportedly closed. By June 2021, the only real asset the Company and Scio
16 shareholders purportedly held was the 900,000 shares of Adamas stock. The secret reduction and
17 hidden pro rata distribution were both undisclosed as of June 2021.

21 **THE ADAMAS CLASS ACTION DEFENDANTS MISREPRESENT THE STATUS**
22 **OF THE ACTION AND SERVICE OF THE VERIFIED AMENDED**
23 **SHAREHOLDER DERIVATIVE COMPLAINT AND CLASS ACTION**
24 **COMPLAINT**

25 80. The initial Complaint in the Action brought derivative claims solely against the
26 Scio Derivative Defendants. Plaintiff filed an Amended Complaint adding the Adamas Derivative
27 Defendants and Adamas Class Action Defendants and alleging both derivative claims by Scio

1 against the Scio Derivative Defendants and class claims on behalf of the Scio shareholders in their
 2 capacity as Adamas shareholders against the Adamas Class Action Defendants. In connection with
 3 their public filings with the SEC, the Adamas Class Action Defendants made certain
 4 representations concerning this Action and status on service of process.

5
 6 **MISSTATEMENTS CONCERNING STATUS OF LITIGATION AND SERVICE**

7
 8 81. On December 6, 2022, Adamas filed its Final Prospectus and represented as
 9 follows:

10
 11 The following are among the misstatements and omissions in the Registration
 12 Statement/Final Prospectus filed by Adamas One with the SEC on December 6, 2022:

13 **December 6, 2022, Registration Statement/Final Prospectus: Risk Factors (p.7), states:**

14 Investing in our common stock involves a high degree of risk. You should carefully
 15 consider the risks highlighted in the section titled “Risk Factors” beginning on page
 16 14 of this prospectus before making an investment decision. Some of these risks
 include the following:

17 The former stockholders of Scio or the SEC may bring action for possible omissions
 18 from Scio’s proxy statement for the special meeting of stockholders held to approve
 the asset sale transaction between Scio and our company.

19 **December 6, 2022, Registration Statement/Final Prospectus: Risks Related to Legal and**
 20 **Regulatory Matters (p.15), states:**

21 The former stockholders of Scio or the SEC may bring action for possible omissions
 22 from Scio’s proxy statement for the special meeting of stockholders held to approve
 23 the asset sale transaction between Scio and our company.

24 **December 6, 2022 Registration Statement/Final Prospectus (p.28) states:**

25 **The former stockholders of Scio or the SEC may bring action for possible**
 26 **omissions from Scio’s proxy statement for the special meeting of stockholders**
 27 **held to approve the asset sale transaction between Scio and our company.**

On January 31, 2019, we entered into an Amended Asset Purchase Agreement with Scio, which was subsequently amended February 3, 2020, pursuant to which we acquired substantially all of the assets of Scio. Scio filed its definitive proxy statement with the SEC on May 17, 2019, for a special meeting of the stockholders to obtain stockholder approval of the sale transaction. The transaction was approved by a majority of the Scio stockholders voting in person or by proxy at the special meeting of stockholders held commencing on June 7, 2019 and reconvening on August 6, 2019. The former stockholders of Scio or the SEC may be able to bring an action for monetary damages or rescission based on possible omissions from such proxy statement, such as audited financial statements. While financial statements were filed, it is our understanding that Scio did not have the funds to pay for an audit. We believe any such claims made against our company would likely be without merit given that the proxy statement was filed by Scio and not our company and that we acquired only the assets and certain liabilities of Scio and did not assume any and all liabilities of Scio. We would defend any such claims vigorously. If a former stockholder of Scio or the SEC were to bring a claim, however, it could divert the attention of our management, which could have a material adverse effect on our business, results of operations, financial condition, and prospects.

December 6, 2022, Registration Statement/Final Prospectus: Legal Proceedings (p.65), states:

We have been made aware of the filing of a stockholder derivative complaint and class action complaint filed on behalf of Scio and the named plaintiff and for other Adamas One shareholders similarly situated against the Company, Messrs. Grdina and McGuire and other former Scio directors as defendants alleging, among other things, breach of various fiduciary duties, conflicts of interest, and other misconduct relating to the acquisition of the Scio assets by us and seeking redress. We have not been served with the lawsuit as of the date of this prospectus and if and when served, intend to vigorously defend such action.¹

December 6, 2022, Registration Statement/Final Prospectus: Financial Statements, Note 13 (F-28) Subsequent Events. No Scio/Adamas lawsuit disclosed but events into November and complaint was served on 10-6-22.

82. The statements above from the December 6, 2022, Registration Statement/Final Prospectus misrepresents that a Scio/Adamas lawsuit is a mere risk, when in fact it was already filed prior to December 6, 2022, and the statement concerning “Legal Proceedings” above about

¹ This was the first time the active lawsuit was disclosed to Scio/Adamas shareholders.

1 not being served is incorrect. Adamas was served on October 6, 2022, through its Chief Operating
2 Officer Gerald McGuire (See attached). Indeed, Adamas filed several Preliminary Prospectuses
3 after being served on October 6, 2022, none of which mentioned the Action until the December 6,
4 2022, filing. In fact, Wilbert Wong, purportedly an attorney working in Adamas' legal Department
5 contacted Plaintiff's counsel to seek a 30-day extension to respond to the Amended Complaint.
6

7 **DEFENDANT GRDINA FAILS IN HIS ATTEMPTS TO AVOID SERVICE**

8 83. Prior to attempting service, an investigation was performed. The preliminary
9 investigation revealed several addresses for Grdina, a cell phone number, and automobiles owned
10 by Grdina. The writ service report on serving Grdina states:
11

12 On November 1, 2022, at 10:05 a.m., an attempt was made to serve John Grdina at
13 the Headquarters of Adamas One Corp., 17767 N Perimeter Drive, Suite B115,
14 Scottsdale, Arizona 85255. During this attempt, the door to suite B114 was locked
15 and blinds covered the window next to the door preventing anyone from seeing
16 inside the unit. No one answered the door. There was no signage on the door or
17 outside the door indicating if the suite was occupied. Additionally, the "marquee
sign" at the front of the building at 17767 N Perimeter Drive, Scottsdale, Arizona
85255, had no listing for any business in suite B115.

18 On November 1, 2022, at 10:45 a.m., during an attempt to serve John Grdina at his
19 reported secondary address, 16000 N 80th Street, Suite C, Scottsdale, Arizona
20 85255, this was found to be the location of Choice Motor Group LLC, (a boutique
21 motor vehicle dealership in Scottsdale that specializes in pre- owned luxury, exotic
and classic automobiles) telephone number (602) 569-2222. The mechanic, Steve
(LNU), indicated he takes care of John Grdina's vehicles and is a personal friend of
22 Mr. Grdina. At the time of this attempt, Steve was servicing a Mercedes that was
23 owned by Mr. Grdina. Steve was not sure when Mr. Grdina would be around. An
attempt was made to contact Mr. Grdina on his cell phone, (480) 361-2669 to
24 arrange a meeting, there was no answer to the call. Steve then sent a text to Mr.
Grdina.
25

26 On November 1, 2022, at 11:15 a.m., an attempt was made to serve John Grdina at
27 his reported residence, 10015 E. Adele Court, Scottsdale, Arizona 85255. During
the attempt no vehicles were observed at the residence, and no one answered the
28

1 door at the residence. The residence has a "Ring Doorbell" and cameras covering
2 the outside and anyone that approaches the residence.

3 On November 3, 2022, at 9:30 a.m., an attempt was made to serve John Grdina at
4 Adamas One Headquarters, 17767 N Perimeter Drive, Suite B115, Scottsdale,
5 Arizona 85255. During this attempt the door was locked, and Mr. Grdina was not
6 located at the business, nor any of his vehicles we observed to be at the location.

7 On November 5, 2022, Saturday, to locate and serve John Grdina, a check was
8 made at the following locations without locating Mr. Grdina:

9 10:10 a.m. Grdina's residence, 10015 E. Adele Court, Scottsdale,
10 Arizona 85255

11 2:25 p.m. 16000 N 80th Street, Suite C, Scottsdale, Arizona 85255

12 On November 7, 2022, at 9:00 a.m., an attempt was made to serve John Grdina at
13 the Headquarters of Adamas One. No one was at the office. Note, Adamas appears
14 to have moved out of 17767 N Perimeter Drive, Suite B115, Scottsdale, Arizona
15 85255, or only uses the office for certain occasions.

16 On November 11, 2022, at 7:30 a.m., an attempt was made to serve John Grdina at
17 his residence, 10015 E. Adele Court, Scottsdale, Arizona 85255. During this
18 attempt no one answered the door at the residence, and none of Grdina's vehicle[s]
19 [were] observed.

20 On November 14, 2022, at 11:05 a.m., during conversation with Steve at Choice
21 Motor Group, Steve indicated he had talked with Grdina and informed him about
22 the legal documents. Also learned from Steve that Grdina has obtained a new Ford
23 F-150 Raptor, truck. The truck was at Choice Motor and was pointed out by Steve.
24 The vehicle displayed California plate BW44W56.

25 On November 14, at 11:20 a.m., service was attempted at Grdina's residence, 10015
26 E. Adele Court, Scottsdale, Arizona 85255, and no one could be located at the
27 residence.

28 On November 29, 2022, at 10:45 a.m., during an attempt to serve John Grdina at
his reported residence, 10015 E. Adele Court, Scottsdale Arizona 85255, there was
a package at the front door addressed to Erin Naas a/k/a Erin Elizabeth Naas-Grdina
at the address. The door was answered by a Hispanic female who identified herself
as Rosa Cruse De Perales. Ms. De Perales verified the John Grdina lived at the
residence, and that she was employed ... as a housekeeper by Mr. Grdina. Ms. De
Perales stated Mr. Grdina would be back in a couple of hours. Ms. Perles took the
papers and said she would give the[m] to Mr. Grdina. Ms. Perales was observed to

1 go to the back door of the residence and was overheard speaking with a male.
2 Immediately, a vehicle occupied by a white male came from the rear of the
3 residence and departed at a high rate of speed. Due to the speed of the vehicle, we
4 were unable to identify the driver, but it is believed to have been driven by Mr.
5 Grdina.

6 During investigation at Choice Motor Group, a business card on display indicated
7 one of the employees to be Jim Grdina, Choice Motor Credit. This is believed to be
8 Mr. Grdina's brother James Raymond Grdina.

9 Additional phone calls were placed to Grdina's cell phone xxxxxx2669, on
10 November 14, 2022, and November 15, 2022, and there was no answer.

11 84. Defendant Grdina appears to be a skilled artisan at avoiding service. On May 3,
12 2022 the Arizona Court of Appeals issued its decision in Power Glob. Trading Co. v. Grdina, 1
13 CA-CV-0475 (Ariz. Ct. App. May 5, 2022), affirming the trial court's default judgment finding
14 that Defendant Grdina was properly served and rejecting Grdina's argument that service of process
15 was defective. Representing Grdina was Greenberg Taurig LLP, Adamas' counsel in going public.
16 (See attached). Plaintiff's position is that the November 29, 2022 service was proper service.

17 **DERIVATIVE ALLEGATIONS**

18 85. Plaintiff brings this action derivatively in the right and for the benefit of Scio to
19 redress injuries suffered, and to be suffered, by Scio as a direct result of breaches of fiduciary duty
20 and other misconduct by the Scio Individual Derivative Defendants and serious wrongdoing by
21 the Adamas Derivative Defendants.

22 86. Scio is named as a nominal defendant solely in a derivative capacity. This is not a
23 collusive action to confer jurisdiction on this Court that it would not otherwise have.

24 87. Plaintiff will adequately and fairly represent the interests of Scio in enforcing and
25 prosecuting its rights.

26 88. Plaintiff has continuously been a stockholder of Scio at all times relevant to the
27

wrongdoing complained of and is a current Scio stockholder.

DEMAND FUTILITY ALLEGATIONS

89. Plaintiff incorporates by reference and re-alleges each and every allegation stated above as if fully set forth herein.

90. A pre-suit demand on the Board of Scio is futile and, therefore, excused. Upon information and belief, at the time the Verified Stockholder Derivative Complaint was filed, the Scio Board consisted of the following four directors, all of whom are Scio Individual Derivative Defendants: McPheely, Leaverton, Smoak and McGuire. Plaintiff only needs to adequately allege demand futility as to at least two of the four directors on the Board at the time this derivative action was commenced. Here, the entire Board is infected.

91. At the time of the shareholder vote to approve the Adamas Transaction on June 7, 2019, two of the six Scio directors had resigned, as well as the CFO. On February 7, 2019, the Scio Individual Derivative Defendants acknowledged the resignation of Scio directors Wolkowitz and Likely. Jonathan Pfohl, the CFO, resigned on May 6, 2019. With Scio ceasing operations in October 2017, the only four remaining in the Company were the Scio Individual Derivative Defendants. No one else was left to engage in the misconduct, but for the Scio Individual Derivative Defendants.

92. Under Nevada corporate law when a company has its charter revoked, it is the board of directors who are charged with creating a trust for the assets and by law become trustees. Alternatively, when a company is dissolved under Nevada corporate law, the board is mandated to first approve the dissolution, provide notice to the shareholders and, in some cases, hold a shareholder vote to approve the dissolution. The Scio Individual Director Defendants knowingly

1 failed to comply with Nevada corporate law.

2 93. Further, hiding the pro rate distribution of Adamas stock to Scio shareholders and
3 the secret share reduction, whereby Scio and Scio shareholders had the total amount of Adamas
4 shares reduced from 900,000 to 800,000 could only have been accomplished with the participation
5 of the Scio Individual Derivative Defendants. The secret share reduction was memorialized in the
6 Second Addendum executed by Scio Individual Director Defendant McGuire, who was
7 simultaneously serving as Adamas CFO when he signed the Second Addendum on behalf of Scio
8 as Scio CEO, a prima facie conflict. The Lock-Up/Leak Out Provisions were also amended to the
9 detriment of Scio and its shareholders in connection with the Adamas Preliminary Prospectus filed
10 with the SEC on May 31, 2022. Again, it was executed by McGuire this time as Scio President
11 while serving as Adamas COO another prima facie conflict.
12

13
14 94. Additionally, the Company was sued by its own law firm that represented it in the
15 Adamas Transaction and had a default judgment entered against it, and had a non-lawyer, Scio
16 Individual Derivative Defendant McGuire, unsuccessfully attempt to represent the Company in
17 those proceedings.
18

19 95. All of the above in ¶¶ 92-94 had to be performed by the Scio Individual Derivative
20 Defendants or by their acquiescence. There was no one else who could have engaged in the
21 misconduct on behalf of the Company except for the Scio Individual Derivative Defendants. A full
22 listing of the Scio Individual Derivative Defendants transgression is set forth below in ¶ 96.
23

24 96. Demand is excused as futile as to all four of the Scio Individual Derivative
25 Defendants because each one of them faces, individually and collectively, a substantial likelihood
26 of liability as a result of their actions in knowingly or recklessly and in bad faith; (i) withholding
27 from Scio shareholders the results of the shareholder vote on the Adamas Transaction, shareholder
28

1 approval of which was a prerequisite to consummation of the Adamas Transaction, (ii) withholding
2 from Scio shareholders whether the Adamas Transaction ever closed, (iii) closing the Adamas
3 Transaction without informing Scio shareholders, (iv) breaching their fiduciary duties by: (a) not
4 requesting Adamas register the 900,000 Adamas shares with the SEC post-closing in a timely
5 fashion as part of the Amended Agreement and not informing Scio shareholders; (b) secretly
6 distributing of the 900,000 shares of Adamas stock received by Scio on September 17, 2019; and
7 (c) agreeing to and hiding the Second Addendum from Scio shareholders reducing the 900,000
8 Adamas shares to 800,000 shares and causing and/or permitting the Lock-Up/Leak Out Provision
9 to be amended to the detriment of Scio and its shareholders; (v) not informing Scio and/or the Scio
10 shareholders how their investment in the 900,000 shares of Adamas stock was performing, (vi) not
11 informing Scio shareholders whether the Scio Individual Derivative Defendants secured debt was
12 ever satisfied; (vii) not informing Scio shareholders whether the unsecured debt was ever satisfied;
13 (viii) not communicating any financial information to Scio shareholders concerning Scio or
14 Adamas post-closing of the Adamas Transaction; (ix) voluntarily permitting the Company's
15 registration of its publicly traded shares with the SEC revoked; (x) causing and/or permitting the
16 Company's corporate status in Nevada to be revoked and failing to place Scio assets in trust and
17 act as trustees and/or dissolving the Company without a shareholder vote and/or providing notice
18 of the dissolution all in violation of a board's responsibilities pursuant to Nevada corporate law,
19 (xi) engaging in related party transactions by buying diamonds from the Company for their own
20 use; (xii) having made no attempt to contact shareholders after the Company's registration of its
21 shares were revoked in August 2019 with any plans for the Company going forward; (xiii) causing
22 the Company to have a default judgment entered against it and then paying over \$60,000 to satisfy
23 the default judgment and having Scio Individual Derivative Defendant McGuire, a non-lawyer,
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1 unsuccessfully appear in those proceedings and without informing Company shareholders; (xiv)
2 failed to exercise Scio's right to comment on the Registration Statement and Final Prospectus
3 before they were filed.

4 97. The Scio Individual Derivative Defendants admittedly also engaged in related party
5 transactions. According to the Scio Final Proxy Statement, in May 2017 (just five months prior to
6 ceasing operations), the Company initiated an Add-On Notes offering in which the Scio Individual
7 Derivative Defendants participated, collectively purchasing \$165,000 of secured debt that
8 ultimately was paid back in the Adamas Transaction. The Scio Individual Derivative Defendants
9 concede that "[t]hese individuals therefore have an interest in the ["Adamas"] [T]ransaction that
10 is different from the average shareholder." This lack of independence also infects their ability to
11 field a demand. In addition, McGuire is COO of Adamas leaving no doubt about his lack of
12 independence.
13
14

15 98. As a result of the foregoing, the Scio Individual Derivative Defendants breached
16 their fiduciary duties, face a substantial likelihood of liability, are not disinterested, and demand
17 upon them is futile, and accordingly excused.
18

19 99. The Scio Individual Derivative Defendants conduct described herein and
20 summarized above was based on bad faith and intentional, reckless, or disloyal misconduct. Thus,
21 none of the Scio Individual Derivative Defendants can claim exculpation from their violations of
22 duty pursuant to the Company's bylaws. As all four of the Scio Individual Derivative Defendants
23 make up the entire Company Board face a substantial likelihood of liability, they are self-interested
24 in the actions challenged herein and cannot be presumed to be capable of exercising independent
25 and disinterested judgment about whether to pursue this action on behalf of the shareholders of the
26 Company. In fact, all four Scio Individual Derivative Defendants actively participated in the
27
28

1 misconduct and/or by their acquiescence of the misconduct. Thus, any demand upon the Scio
2 Individual Derivative Defendants would be futile.

3 100. The acts complained of herein constitute violations of fiduciary duties owed by Scio
4 officers and directors, and these acts are incapable of ratification.

5 101. The Scio Individual Derivative Defendants may also be protected against personal
6 liability for their acts of mismanagement and breaches of fiduciary duty by directors' and officers'
7 liability insurance if they caused the Company to purchase it for their protection with corporate
8 funds, *i.e.*, monies belonging to the stockholders of Scio. If there is a directors' and officers'
9 liability insurance policy covering the Scio Individual Derivative Defendants, it may contain
10 provisions that eliminate coverage for any action brought directly by the Company against the Scio
11 Individual Derivative Defendants, known as, *inter alia*, the "insured-versus-insured exclusion."
12 As a result, if the Scio Individual Derivative Defendants were to sue themselves or certain of the
13 officers of Scio, there would be no directors' and officers' insurance protection. Accordingly, the
14 Scio Individual Derivative Defendants cannot be expected to bring such a suit. On the other hand,
15 if the suit is brought derivatively, as this action is brought, such insurance coverage, if such an
16 insurance policy exists, will provide a basis for the Company to effectuate a recovery. Thus,
17 demand on the Scio Individual Derivative Defendants is futile and, therefore, excused.

18 102. If there is no directors' and officers' liability insurance, then the Scio Individual
19 Derivative Defendants will not cause Scio to sue the Scio Individual Derivative Defendants named
20 herein. If they did, they would face uninsured individual liability. Accordingly, demand is futile
21 and excused.

22 103. For the reasons noted above, none of the four current members of the Board could
23 consider a demand with disinterestedness and independence. Accordingly, a demand on the Board
24

1 is futile and excused.

2 **CLASS ACTION ALLEGATIONS**

3 104. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3)
4 on behalf of a proposed Class defined as:

5 All Scio shareholders who became Adamas shareholders pursuant to the Adamas
6 Transaction.

7 105. Excluded from the Class are: (a) the Scio Individual Derivative Defendants,
8 Adamas Derivative Defendants and Adamas Class Action Defendants (collectively “Defendants”),
9 Defendants’ family members and/or entities controlled by any Defendant and/or Defendants’
10 family members, and all heirs, successors or assigns, and any of Adamas and/or Scio officers,
11 directors and employees; their affiliates and affiliates’ of their officers, directors and employees;
12 (b) Plaintiff’s Counsel; (c) judicial officers and their immediate family members and associated
13 court staff assigned to this case; and (d) persons or entities who or which timely and properly
14 exclude themselves from the Class.
15

16 106. Certification of Plaintiff’s claims for classwide treatment is appropriate because
17 Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as
18 would be used to prove those elements in individual actions alleging the same claims. Class
19 members are also readily ascertainable from the records of Scio and/or Adamas.
20

21 107. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The precise number of
22 members of the proposed class is unknown to Plaintiff at this time, but, based on information and
23 belief and publicly available reports, members of the Class (“Class Members”) number at the very
24 least in the of thousands of people. Therefore, the Class is so numerous that joinder of all members
25
26

1 would be impracticable. All Class Members may be notified of the pendency of this action based
2 on stock records maintained by Adamas and/or Adamas' agent.

3 108. **Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2)**
4 **and 23(b)(3).** This Class Action involves common questions of law and fact that predominate over
5 any questions affecting individual Class Members, including:
6

7 a. Whether the Adamas Class Action Defendants withheld from Plaintiff and the Class
8 that they had become Adamas shareholders in September 2019 via the secret distribution;

9 b. Whether the Adamas Individual Class Action Defendants breached their fiduciary
10 duties to plaintiff and the Class by failing to keep Plaintiff and the Class informed about
11 Scio and/or Scio shareholders' investment in Adamas stock when they became Adamas
12 shareholders (which they did not even know about to this day);

13 c. Whether the Adamas Class Action Defendants engaged in self-dealing by reducing
14 the number of Adamas shares received by Scio and its shareholders from 900,000 to
15 800,000 as provided for by the Second Addendum;
16

17 d. Whether the Second Addendum and amended Lock-Up/Leak Out Provision are null
18 and void because Adamas Individual Class Action Defendant McGuire had a direct
19 conflict, rendering both not arms-length transactions;
20

21 e. whether Plaintiff and the Class have been damaged and, if so, the extent of such
22 damages; and
23

24 f. whether Plaintiff and the Class are entitled to equitable relief, including but not
25 limited to, injunctive relief.
26

1 109. The Adamas Class Action defendants engaged in a common course of conduct
2 giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the
3 Class. Similar or identical statutory and common law violations, business practices, and injuries
4 are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the
5 numerous common questions that dominate this action.

6
7 110. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are
8 typical of the claims of Class Members because, among other things, Plaintiff and the other Class
9 Members were injured through the substantially uniform misconduct described above. Plaintiff is
10 advancing the same claims and legal theories on his own behalf and on the behalf of other Class
11 Members, and no defense is available to the Adamas Class Action Defendants that is unique to
12 Plaintiff.

13
14 111. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).**
15 Plaintiff is an adequate representative of the Class because his interests do not conflict with the
16 interests of other Class Members. Additionally, Plaintiff has retained counsel competent and
17 experienced in complex class action litigation. Thus, the Class's interests will be fairly and
18 adequately protected by Plaintiff and his counsel.

19
20 112. **Predominance and Superiority—Federal Rule of Civil Procedure 23(b)(2) and**
21 **(3).** A class action is superior to any other available means for the fair and efficient adjudication
22 of this controversy. Prosecution of separate actions by individual Class Members would create the
23 risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for
24 the Adamas Class Action Defendants and no unusual difficulties are likely to be encountered in
25 the management of this matter as a class action. The damages, harm, or other financial detriment
26 suffered individually by Plaintiff and other Class Members are relatively small compared to the
27

1 burden and expense that would be required to litigate their claims on an individual basis against
2 Defendant, making it impracticable for the Class Members to individually seek redress for the
3 Class Action Defendants' wrongful conduct. Treatment as a class action will achieve substantial
4 economies of time, effort, and expense, and provide comprehensive and uniform supervision by a
5 single court .

6
7 113. The prerequisites to maintaining a class action for injunctive or equitable relief
8 pursuant to Federal Rule of Civil Procedure 23(b)(2) are met as the Adamas Class Action
9 Defendants have acted or refused to act on grounds generally applicable to the Class, thereby
10 making final injunctive, declaratory, or equitable relief appropriate with respect to the Class as a
11 whole.

12 COUNT I

13 **Against the Scio Individual Derivative Defendants for Breach of Fiduciary Duties**

14
15 114. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
16 above, as though fully set forth herein.

17 115. Each Scio Individual Derivative Defendant owed to the Company the duty to
18 exercise candor, good faith, and loyalty in the management and administration of Scio's business
19 and affairs.

20
21 116. Each of the Scio Individual Derivative Defendants violated and breached his
22 fiduciary duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

23 117. The Scio Individual Derivative Defendants' conduct set forth herein was due to
24 their bad faith and intentional or reckless breach of the fiduciary duties they owed to the Company,
25 as alleged herein. The Scio Individual Derivative Defendant intentionally or recklessly breached
26 or disregarded their fiduciary duties to protect the rights and interests of Scio.

1 118. The Scio Individual Derivative Defendants failed to correct and/or caused the
2 Company to fail to rectify any of the wrongs described herein, rendering them personally liable to
3 the Company for breaching their fiduciary duties.

4 119. The Scio Individual Derivative Defendants had actual or constructive knowledge
5 that as a result of their actions in knowingly or recklessly and in bad faith; (i) withholding from
6 Scio shareholders the results of the shareholder vote on the Adamas Transaction, shareholder
7 approval of which was a prerequisite to consummation of the Adamas Transaction, (ii) withholding
8 from Scio shareholders whether the Adamas Transaction ever closed, (iii) closing the Adamas
9 Transaction without informing Scio shareholders, (iv) breaching their fiduciary duties by: (a) not
10 requesting Adamas register the 900,000 Adamas shares with the SEC post-closing in a timely
11 fashion as part of the Amended Agreement and not informing Scio shareholders; (b) secretly
12 distributing of the 900,000 shares of Adamas stock received by Scio on September 17, 2019; and
13 (c) agreeing to and hiding the Second Addendum from Scio shareholders reducing the 900,000
14 Adamas shares to 800,000 shares and causing and/or permitting the Lock-Up/Leak Out Provision
15 to be amended to the detriment of Scio and its shareholders; (v) not informing Scio and/or the Scio
16 shareholders how their investment in the 900,000 shares of Adamas stock was performing, (vi) not
17 informing Scio shareholders whether the Scio Individual Derivative Defendants secured debt was
18 ever satisfied; (vii) not informing Scio shareholders whether the unsecured debt was ever satisfied;
19 (viii) not communicating any financial information to Scio shareholders concerning Scio or
20 Adamas post-closing of the Adamas Transaction, (ix) voluntarily permitting the Company's
21 registration of its publicly traded shares with the SEC revoked; (x) causing and/or permitting the
22 Company's corporate status in Nevada to be revoked and failing to place Scio assets in trust and
23 act as trustees and/or dissolving the Company without a shareholder vote and/or providing notice
24
25
26
27
28

1 of the dissolution all in violation of a board's responsibilities pursuant to Nevada corporate law,
 2 (xi) engaging in related party transactions by buying diamonds from the Company for their own
 3 use; (xii) having made no attempt to contact shareholders after the Company's registration of its
 4 shares were revoked in August 2019 with any plans for the Company going forward; (xiii) causing
 5 the Company to have a default judgment entered against it and then paying over \$60,000 to satisfy
 6 the default judgment and having Scio Individual Derivative Defendant McGuire, a non-lawyer,
 7 unsuccessfully appear in those proceedings and without informing Company shareholders; (xiv)
 8 failing to exercise Scio's right to provide comments to the Registration Statement and Final
 9 Prospectus prior to their filing. These actions were not a good-faith exercise of prudent business
 10 judgment and/or inaction by the Scio Individual Derivative Defendants to protect and promote the
 11 Company's corporate interests.
 12

13
 14 120. As a direct and proximate result of the Scio Individual Derivative Defendants'
 15 breaches of their fiduciary obligations, Scio has sustained and continues to sustain significant
 16 damages. As a result of the misconduct alleged herein, the Scio Individual Derivative Defendants
 17 are liable to the Company.
 18

19 121. Plaintiff on behalf of Scio has no adequate remedy at law.

20 **COUNT II**

21 **Against Scio Individual Derivative Defendants for Unjust Enrichment**

22 122. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
 23 above, as though fully set forth herein.
 24

25 123. By their wrongful acts and violations of law that they made and/or caused to be
 26 made, the Scio Individual Derivative Defendants were unjustly enriched at the expense of, and to
 27 the detriment of, Scio.
 28

COUNT III

126. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein. Each of the Adamas Derivative Defendants owed to Plaintiff and the Class the duty to exercise candor, good faith, and loyalty in connection with Plaintiff and the Class Members investment in Adamas stock.

128. The Adamas Class Action Defendants' conduct set forth herein was due to their bad faith and intentional or reckless breach of the fiduciary duties they owed to Plaintiff and the Class, as alleged herein. The Adamas Class Action Defendants intentionally or recklessly breached or disregarded their fiduciary duties to protect the rights and interests of Plaintiff and the Class.

130. The Adamas Class Action Defendants had actual or constructive knowledge that as a result of their actions in knowingly or recklessly and in bad faith: (i) failing to inform Plaintiff and the Class that they were Adamas shareholders pursuant to the secret distribution; (ii) failing to

1 inform Plaintiff and the Class concerning the Second Addendum and amended Lock-Up/Leak Out
 2 Provisions; (iii) entering into the Second Addendum and amending the Lock-Up/Leak Out
 3 Provisions to the detriment of Plaintiff and the Class; and (iv) providing no information to Plaintiff
 4 and the Class concerning the performance of Adamas. As a direct and proximate result of the
 5 Adamas Class Action Defendants' breaches of their fiduciary obligations, Plaintiff and the Class
 6 have sustained and continue to sustain significant damages. As a result of the misconduct alleged
 7 herein, the Adamas Class Action Defendants are liable to Plaintiff and the Class.
 8

9 131. Plaintiff and the Class have no adequate remedy at law.

10 **COUNT IV**

11 **Against the Adamas Derivative Defendants for Breach Contract and Conspiracy** 12 **on Behalf of Scio**

13 132. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
 14 above, as though fully set forth herein.

15 133. The Adamas Derivative Defendants entered into the Amended Agreement
 16 containing a provision that the Amended Agreement was the entire agreement unless amended by
 17 both parties. With knowledge that Adamas Individual Defendant McGuire was conflicted due to
 18 his position as Adamas COO, the Adamas Derivative Defendants amended the Amended
 19 Agreement in violation of the entire agreement provision.
 20

21 134. The Adamas Derivative Defendants conspired with the Scio Individual Derivative
 22 Defendants to enter into the the Second Addendum and amended Lock-Up/Leak-Out Provisions
 23 to the detriment of Scio and its shareholders.
 24

25 135. Scio was harmed as a result of the Adamas Derivative Defendants.

26 136. Plaintiff on behalf of Scio has no adequate remedy at law.
 27

COUNT V

Against the Adamas Derivative Defendants for Unjust Enrichment

137. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

138. By their wrongful acts and violations of law that they made and/or caused to be made, the Adamas Derivative Defendants were unjustly enriched at the expense of, and to the detriment of Scio and its shareholders.

139. Plaintiff seeks injunctive relief from the Adamas Derivative Defendants for an order from this Court including, but not limited to, declaring null and void the Second Addendum and amended Lock-Up/Leak Out Provisions —obtained by the Adamas Derivative Defendants due to their wrongful conduct.

140. Plaintiff on behalf of Scio has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of Scio, demands judgment as follows:

- A. Declaring that Plaintiff may maintain the Derivative Action on behalf of Scio and that Plaintiff is an adequate representative of the Company;
- B. Declaring that Plaintiff may maintain the Class Action on behalf of Plaintiff and the Class and that Plaintiff is an adequate representative of the Class;
- C. Declaring that the Scio Individual Derivative Defendants have breached and/or aided and abetted the breach of their fiduciary duties to Scio;
- D. Declaring that the Adamas Class Action Defendants have breached and/or aided and abetted the breach of their fiduciary duties to Plaintiff and the Class;
- E. Declaring that the Scio Individual Derivative Defendants have wrongfully harmed Scio

1 and its shareholders;

2 F. Declaring that the Adamas Individual Derivative Defendants have wrongfully harmed Scio
3 and its shareholders;

4 G. Declaring that the Adamas Class Action Defendants have wrongfully harmed Plaintiff and
5 the Class;

6 H. Determining and awarding to Scio the damages sustained by it as a result of the violations
7 set forth above from each of the Scio Individual Derivative Defendants, jointly and
8 severally, together with pre-judgment and post-judgment interest;

9 I. Determining and awarding to Scio the damages sustained by it as a result of the violations
10 set forth above from each of the Adamas Derivative Defendants, jointly and severally,
11 together with pre-judgment and post-judgment interest;

12 J. Determining and awarding to Plaintiff and the Class the damages sustained by them as a
13 result of the violations set forth above from each of the Adamas Class Action Defendants,
14 jointly and severally, together with pre-judgment and post-judgment interest;

15 K. Directing Scio and the Scio Individual Derivative Defendants to take all necessary actions
16 to maximize shareholder value by declaring a special dividend of any monies recovered by
17 Scio in the Derivative Action;

18 L. Determining and awarding to Scio the damages sustained by it as a result of the violations
19 set forth above from each of the Adamas Derivative Defendants, jointly and severally,
20 together with pre-judgment and post-judgment interest;

21 M. Awarding Scio injunctive relief from the Scio Individual Derivative Defendants and the
22 Adamas Derivative Defendants, and each of them including, but not limited to, declaring
23 the Second Addendum and amended Lock-Up/Leak Out Provisions null and void
24

1 N. Awarding Scio and/or Plaintiff and the Class the costs and disbursements of the Action,
2 including reasonable attorneys' and experts' fees, costs, and expenses; and

3 O. Granting such other and further relief as the Court may deem just and proper.

4 **JURY DEMAND**

5 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury.

6
7 Dated: January 20, 2023

8 Respectfully submitted,

9 /s/ Martin A Muckleroy

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January, 2023, I personally served a true and correct copy of the foregoing VERIFIED SECOND AMENDED STOCKHOLDER DERIVATIVE COMPLAINT AND CLASS ACTION COMPLAINT on all parties by causing a true and correct copy to be filed with the court's CM/ECF system, which should automatically send a copy to all counsel of record.

Dated: January 20, 2023

/s/ Martin A Muckleroy

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